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No. ____ OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1995

COEUR d'ALENE TRIBE,

Petitioner,

v.

STATE OF IDAHO,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701, et seq. divides Indian gaming into three classes: Class I (traditional games), Class II (bingo and related games) and Class III (all other gaming). An Indian tribe wishing to conduct Class III gaming must first negotiate and enter into a "compact" with "a state that permits such gaming for any purpose by any person, organization or entity . . . " 25 U.S.C. 2710(d)(1)(B). This case presents the general question of what gaming is negotiable in those compact negotiations.

In determining what Class III gaming is negotiable under IGRA, are a state's gaming laws to be viewed in general terms under the "civil regulatory/criminal prohibitory" analysis of *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) referred to in the IGRA's legislative history making all gaming or broad categories of gaming negotiable, or are the state gaming laws to be viewed in minute detail, limiting negotiations to only the exact games and terms of state law?

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STATE OF IDAHO,

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Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

The Coeur d'Alene Tribe petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals, App. at 1, is reported at 51 F.3d 876 (9th Cir. 1995). The denial of the request for rehearing, App. at 3, is currently unreported. The opinion of the District Court, App. 4, 6, is reported at 842 F.Supp. 1268 (D.Id. 1994).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). The Court of Appeals entered its judgment on April 6, 1995 and denied the Petition for Rehearing on May 19, 1995. This appeal is timely filed pursuant to Supreme Court Rule 13.1, 13.4.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The primary statutory provisions involved in the case are 25 U.S.C. 2701(4) and (5) and 25 U.S.C. 2710(d)(1).

25 U.S.C. 2701. Congressional findings

The Congress finds that –

* * *

(4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

25 U.S.C. 2710. Tribal gaming ordinances

* * *

(b) Regulation of Class II gaming activity; net revenue allocation; audits; contracts

> (1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if –
>
> > (A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming as not otherwise specifically prohibited on Indian lands by Federal law), . . .
>
> * * *
>
> (d) Class III gaming activities; authorization; revocation; Tribal-State compact
>
> (1) Class III gaming activities shall be lawful on Indian lands only if such activities are –
>
> > (A) authorized by an ordinance or resolution that –
> >
> > (i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,
> >
> > (ii) meets the requirements of subsection (b) of this section, and
> >
> > (iii) is approved by the Chairman,
> >
> > (B) located in a State that permits such gaming for any purpose by any person, organization or entity,
> >
> > (C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

Other constitutional, statutory, and legislative history provisions involved in the case are lengthy. The pertinent

text of these provisions are set out in the appendix. They are:

Constitutions

U.S. Constitution, Article 1 § 8, Clause 3, Idaho Constitution, Article III, § 20 (original and amended versions)

Statutes

25 U.S.C. 2701, 25 U.S.C. 2702, 25 U.S.C. 2703, 25 U.S.C. 2710, 28 U.S.C. 1254, I.C. 18-3801, I.C. 18-3809, I.C. 18-3810, I.C. 54-2502, I.C. 54-2512, I.C. 67-7401, I.C. 67-7404, I.C. 67-7447

Legislative History

100th Congress Second Session, S.Rep. No. 100-446.

STATEMENT OF THE CASE

This case squarely addresses one of the most important issues in the entire Indian gaming field. This issue is what gaming is negotiable in Class III gaming compact negotiations between an Indian tribe and a state.

Congress has addressed Indian gaming in the Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 et seq. IGRA divides Indian gaming into three classes. They are Class I (traditional games) 25 U.S.C. 2703(6), Class II (bingo and related games) 25 U.S.C. 2703(7), and Class III (all other gaming), 25 U.S.C. 2703(8). IGRA requires that an Indian tribe which wishes to conduct Class III gaming must enter into a "compact" with the state through a procedure outlined in the statute. 25 U.S.C. 2710(d).

The Coeur d'Alene Tribe (Tribe) initiated this statutory Class III compact negotiation process with the State of Idaho (State) on April 15, 1992. The parties could not agree on the extent of gaming that was negotiable. The Tribe considered all Class III gaming, or broad categories of Class III gaming, to be negotiable. The State considered only the exact types of Class III games actually conducted by the State to be negotiable.

To resolve this impasse, the parties agreed to enter into a Class III Gaming Compact in which it was agreed (1) that the Tribe could conduct the exact types of gaming the State conducted, and (2) that the parties would litigate the issue of whether other Class III gaming was negotiable. The Compact also contained a provision for negotiating and adding other gaming to the Compact if the Tribes prevailed in the litigation. App. at 63. The Class III Compact was approved by the Secretary of Interior. Federal Reporter Vol. 58 No. 28, p. 8478, February 12, 1993.

Because of the procedural way this case developed, the question of what Class III gaming is negotiable is squarely presented in a way that is applicable throughout the United States to every tribe/state Class III compact negotiation that is currently being conducted or will be conducted in the future.

At the time the Tribe initiated the IGRA Class III gaming compact process, the State's Class III gaming scheme consisted of lotteries, parimutuel betting and games

of chance. Original Idaho Constitution[1], Article III § 20. App. at 52. Some types of these three gaming categories were conducted by the State, other types were not. Allowed lotteries were any lottery conducted by the State itself. Original Idaho Constitution, Article III § 20, I.C. 67-7401. App. at 52, 61. When the Compact negotiations began the Idaho State Lottery Commission was conducting three types of lotteries (1) the numbers game generally referred to as lotto (Powerball), (2) pull tabs, and (3) scratch-off games. Gaming such as slot machines, which had been held to be lotteries in the State, *State v. Garden City*, 265 P.2d 328 (Idaho 1953), were generally prohibited, Original I.C. 18-3801, 3809, 3810. App. at 54, 55, 56. Slot machines and other restricted lotteries could, however, have been conducted by the State's Lottery Commission because of the State's unique gaming scheme.[2] I.C. 67-7404(14), (15), 67-7447. App. at 61, 62. Parimutuel betting was allowed on the racing of horses, dogs and mules, but not on other racing. Original Idaho Constitution, Article III § 20(b), I.C. 54-2502, 2512. App. at 52, 58-60. Games of chance (all types of gaming) were allowed if operated by qualified charitable organizations, but not otherwise. Original Idaho Constitution, Article III § 20(c). App. at 52.

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[1] The State changed the gaming provisions of its Constitution and statutes during the Compact negotiations. The State law in effect at the time the Compact negotiation began has been referred to as "Original." The State law as amended has been referred to as "Amended." The question of which of these two gaming schemes should be applicable to the negotiations was raised in the Circuit, but not decided as a result of the manner in which the Circuit disposed of the case. See App. 1.

[2] I.C. 67-7447 exempted the State Lottery Commission from the entirety of the statute that otherwise prohibited gambling.

There was no statutory regulation of charitable games of chance.

Soon after the Compact negotiation process began, State officials called a rare special session of the State legislature to address gaming matters. During the negotiation period the State changed various State gaming statutes and placed a proposed constitutional amendment on the ballot of the fall election.[3] This lawsuit was filed just prior to the vote on the constitutional amendment in the 1992 November election. The proposed changes to the State constitution were adopted.[4]

The State's new gaming scheme still allowed all types of Class III gaming in some form. Any type of gaming was allowed so long as the "prize" was "only additional play."[5] Amended Idaho Constitution, Article III, § 20(4)(b), App. at 53. There was no limit on the amount of "additional play" which could be awarded, nor was there any limit on selling the "additional play" that had been won.

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[3] Under Idaho law, changes in the constitution are to be made upon the adoption of a joint resolution of the legislature and a vote of the majority of the voters at the next election.

[4] The Idaho Supreme Court has held that the State legislature's intent in changing the State's gaming law was to restrict Indian gaming. Although the Court was divided on other issues in the case, it was unanimous on this point. *Nez Perce Tribe v. Cenarrusa*, 867 P.2d 911 (Id. 1993).

[5] This type of gaming was defined as "not gambling," but it still contained all of the elements of "chance, consideration and prize" which *State v. Garden City*, 265 P.2d 328 (Idaho 1953) had held were the elements of a "lottery".

Lotteries were still allowed if run by the State's Lottery Commission, except that constitutional restrictions on the Commission's discretion in selecting the types of lotteries were added. Amended Idaho Constitution, Article III, § 20(1)(a)(2). App. at 53. Parimutuel betting was still allowed if conducted on horse, dog or mule racing. Amended Idaho Constitution, Article III, § 20(1)(b). I.C. 54-2502, 2512. App. at 53, 58. Other allowed games of chance were limited to "bingo and raffle games" conducted by "qualified charitable organization." Amended Idaho Constitution, Article III, § 20(1)(c). App. at 53.

This lawsuit was filed under the terms agreed to in the Class III Compact. App. at 63. The District Court granted summary judgment for the State. App. at 4, 6. It held that (1) only the exact Class III games played by the State were negotiable under IGRA, App. at 4-5, 25-37, 42-43, and (2) the IGRA Class III gaming Compact negotiations were controlled by the new State law which had been adopted in the middle of the negotiations. App. at 4, 22-25, 42.

Although the District Court made reference to the broad "civil regulatory/criminal prohibitory" approach of *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) and the IGRA legislative history, in actuality it did not employ that approach. The District Court did not discuss in any way the provision of Amended Idaho Constitution, Article III, § 20(4)(b) which allows all games where the prize is "only additional play." App. at 36. In fact, when the District Court quoted the Amended Idaho Constitutional provision, it left off section (4) altogether. App. at 8-9. See App. at 53 for a complete version of Amended Idaho Constitution, Article III, § 20.

The District Court also did not apply the *Cabazon* broad "civil regulatory/criminal prohibitory" analysis to lotteries. If it had, the result would have been very different. To paraphrase *Cabazon* as applied to this case, the State regulates rather than prohibits gaming in general and lotteries in particular. The District Court's ruling meant that the only Class III gaming that was negotiable was the Class III gaming which had already been agreed to in the Class III Gaming Compact.

On appeal the Ninth Circuit summarily affirmed the District Court's judgment, citing *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 41 F.3d 421 (9th Cir. 1994) and the District Court's analysis.[6] App. at 1. The Ninth Circuit did not address the issue regarding which State law was applicable. Rehearing was requested and denied. App. at 3.

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[6] *Rumsey* was amended on denial of rehearing and rejection of suggestion for rehearing *en banc* Slip Opinion p. 9975, August 11, 1995. As of this writing that decision is not reported, even on Westlaw. The earlier *Rumsey* opinion, which formed the basis of the Ninth Circuit's opinion in this case, was not materially modified. The *Rumsey* dissent from the rejection of the suggestion for rehearing *en banc* is set out in the Appendix at 73. Since the decision in this case made specific reference to the original *Rumsey* decision, the *Rumsey* quotations and citations in this Petition are from that original *Rumsey* Ninth Circuit opinion.

REASON FOR GRANTING THE WRIT

CONFLICT BETWEEN THE CIRCUITS ON IMPORTANT FEDERAL QUESTION

A. Analytical Overview

This case addresses one of the most important issues in the entire Indian gaming law field.[7] This issue is what gaming is negotiable in Class III Compact negotiations between an Indian tribe and a state. This issue has repeatedly arisen since the passage of the Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 et seq. seven years ago,[8] and is squarely presented by this case.

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[7] The other major dispute involving Indian gaming has been the Eleventh Amendment defense various states raise in the litigation under IGRA. Certiorari has been granted regarding that issue in *Seminole Tribe of Florida v. Florida*, ___ U.S. ___, 115 S.Ct. 932, 130 L.Ed.2d 878 (1995) to be decided this term. If certiorari is granted in this case, the Court will have before it the two major issues that have most plagued the implementation of IGRA since its adoption in 1988.

[8] *Sycuan Band of Mission Indians v. Roache*, 788 F.Supp. 1498, affirmed 54 F.3d 535 (9th Cir. 1995); *Willis v. Fordice*, 850 F.Supp. 523 (S.D. Miss. 1994), affirmed 55 F.3d 633 (1995); *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 41 F.3d 421, (9th Cir. (Cal.) 1994); *Yavapai-Prescott Indian Tribe v. State of Arizona*, 796 F.Supp. 1292 (D.Arizona 1992); *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024 (2nd Cir. 1990), cert denied, 499 U.S. 975, (1991); *Ysleta Del Sur Pueblo v. State of Texas*, 852 F.Supp. 587, reversed on other grounds, 36 F.3d 1325 (5th Cir. 1994), cert denied 115 S.Ct. 1358, 131 L.Ed.2d 215; *Cheyenne River Sioux Tribe v. State of South Dakota*, 830 F.Supp. 523 (D.S.D., 1993), 3 F.3d 273 (8th Cir. (S.D.)); *U.S. v. Sisseton-Wahpeton Sioux Tribe*, 804 F.Supp. 1199 (D.S.D., 1992) reversed and remanded 897 F.2d 358 (8th Cir. (S.D.)); *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 770 F.Supp. 480 (W.D. Wis., 1991), appeal dismissed,

The importance of the federal issue presented by this case, the conflict between the Eighth and Ninth Circuits and the Second Circuit and the fallacy of the Ninth Circuit's reasoning in *Rumsey* (and therefore in this case) is well stated by Judge Canby in his dissent from the rejection of the suggestion for rehearing *en banc* in *Rumsey*.

> This is a case of major significance in the administration of the Indian Gaming Regulatory Act ("IGRA") and it has been decided incorrectly, in a manner that conflicts with the Second Circuit's interpretation of the same statutory language. The result is to frustrate the scheme of state-tribal negotiation that Congress established in IGRA. We should have granted rehearing en banc to prevent the near-nullification of IGRA in a circuit that encompasses a great portion of the nation's Indian country. Our failure to do so may close the only route open to many tribes to escape a century of poverty.
>
> *Rumsey* holds that California, which permits several varieties of Class III gambling, has no duty under IGRA to negotiate with the tribes over the tribes' ability to conduct any game that is illegal under California law. This ruling effectively frustrates IGRA's entire plan governing Class III Indian gaming. . . .
>
> [T]he Second Circuit, in arriving at a conclusion precisely opposite to that of *Rumsey*, stated:
>
> > Under the State's approach, . . . even where a state does not prohibit class III gaming as

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957 F.2d 515 (7th Cir. 1992) cited with approval *Forest County Potawatomi v. Norquist*, 45 F.3d 1079 (7th Cir. 1995).

> a matter of criminal law and public policy, an Indian tribe could nonetheless conduct such gaming only in accord with, and by acceptance of, the entire state corpus of laws and regulations governing such gaming. The compact process that Congress established as the centerpiece of the IGRA's regulation of class III gaming would thus become a dead letter, there would be nothing to negotiate, and no meaningful compact would be possible. Mashantucket Pequot Tribe v. Connecticut, 913 F.2d 1024, 1030-31 (2d Cir. 1990) [FOOTNOTE]
>
> [FOOTNOTE] We recognize that Rumsey's approach is supported by the Eighth Circuit, Cheyenne River Sioux Tribe v. South Dakota, 3 F.3d 273 (8th Cir. 1993), but for the reasons stated we believe that the Second Circuit has much the better overview of IGRA.
>
> The Second Circuit's fears of turning IGRA's compact process into a dead letter are well-founded.
>
> * * *
>
> *Rumsey*, has thus misconstrued IGRA's Class III gaming provisions, and has done so in a manner that defeats Congress's intention and causes great economic harm to numerous tribes. . . .

Rumsey Indian Rancheria of Wintun Indians v. Wilson, 9th Cir. 93-16609, Slip Opinion 9975 at 9982, 3, 7 (Circuit Judge Canby dissenting from rejection of suggestion for rehearing *en banc*). App. at 73.

There can be little doubt that the author of this dissent, and those who joined with him, feel review of

this issue is appropriate as an important federal question on which the Circuits are divided.[9]

This IGRA Compact negotiation requirement has led to heated disputes between states and Indian tribes over what gaming is negotiable in the Class III Compact negotiations. States have generally felt that the gaming negotiations ought to be confined to the strict limits of state law. Indian tribes have felt that Congress intended a much broader approach of allowing negotiation of all Class III gaming, or broad categories of Class III gaming, if the state conducted any Class III gaming.

The Circuits are divided on how to resolve this important federal question.

The Second, Fifth and Seventh Circuits have adopted a broad "civil regulatory/criminal prohibitory" approach to this federal question.[10] Relying on the operable language of IGRA, the legislative history and this Court's prior holding in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), these three Circuits have

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[9] Judge Canby is the author of one of the two or three most useful publications to the Indian law practitioner. American Indian Law In a Nutshell, William C. Canby, Jr., West Publishing Co., 1983.

[10] The individual cases will be discussed after this brief overview. The cases are: *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024 (2nd Cir. 1990); *Willis v. Fordice*, 850 F.Supp. 523 (S.D. Miss. 1994), affirmed without opinion 55 F.3d 633 (5th Cir. 1995); and *Forest County Potawatomi v. Norquist*, 45 F.3d 1079 (7th Cir. 1995) (citing with approval *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 770 F.Supp. 480).

looked at the broad categories of gaming activity to determine what is negotiable in a Class III Compact. If a broad category of gaming activity is permitted in some way under State law, then that category is generally negotiable in Class III Compact negotiation, even if State law criminally regulates portions of it. The only limitation is if an entire gaming activity is specifically criminally prohibited.

Recently the Eighth Circuit distinguished the broad "civil regulatory/criminal prohibitory approach" it had used for Class II gaming and adopted an approach of limiting the negotiation of Class III gaming to the specific limitations of state law. This approach will be referred to as the narrow "specific state game" approach. This "specific state game" analytical approach was followed by the Ninth Circuit and was applied in this case.[11] Rather than look at broad categories of gaming, the Eighth and Ninth Circuits look with minute detail at each specific state law regarding type of game, or size of bet (consideration) or prize to determine what gaming is negotiable. Class III gaming negotiations in the Eighth and Ninth Circuits have thus been restricted to the exact limits of the state's law, rather than to the broad categories approach of the Second, Fifth and Seventh Circuits.

The approach of the Eighth and Ninth Circuits (1) limits the economic development potential to Indian

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[11] Each case will later be discussed in detail. The cases are *U.S. v. Sisseton-Wahpeton Sioux Tribe*, 897 F.2d 358 (8th Cir. 1990); *Cheyenne River Sioux Tribe v. South Dakota*, 3 F.3d 273 (8th Cir. 1993); *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 41 F.2d 421 (9th Cir. 1994).

tribes that Congress had sought to achieve in adopting IGRA, 25 U.S.C. 2701(4), 2702(1). App. at 47; (2) fails to apply to Class III gaming the IGRA Class II legislative history, instructing that the broad "civil regulatory/criminal prohibitory" analysis of this Court's *Cabazon* decision should be followed and that the traditional rules of statutory construction in Indian cases should be followed,[12] 100th Congress Second Session, S.Rep. No. 100-446 at 6, 9, 11-12. App. at 69; and (3) involves federal courts in the minutia of interpreting state gaming law to determine which exact games, bet sizes, prize sizes and other items are negotiable.

To summarize the approaches of the various Circuits, there are three Circuits (Second, Fifth and Seventh) which use the broad "civil regulatory/criminal prohibitory" approach for Class III gaming. Two other Circuits (Eighth and Ninth) use the broad "civil regulatory/criminal prohibitory" approach for Class II gaming, but the narrow "specific state game" approach for Class III gaming.

B. Analysis of Conflicting Decisions

The Second Circuit adopted the broad "civil regulatory/criminal prohibitory" approach in *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024 (2nd Cir. 1990).

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[12] The traditional rules of statutory construction in Indian cases are that any restriction of tribal sovereign rights must be expressly set out in the statute, *U.S. v. Dion*, 476 U.S. 734, 738 (1986), and that statutory ambiguities in statutes passed for the benefit of Indian tribes must be interpreted in favor of the tribes. *Bryan v. Itasca County*, 426 U.S. 373 (1976).

The issue was whether all casino gaming was negotiable if the state allowed charitable casino nights.

The Second Circuit found the IGRA findings at 25 U.S.C. 2701(5) consistent with the broad "civil regulatory/criminal prohibitory" approach of *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). Further the Second Circuit noted that the IGRA legislative history instructing that the *Cabazon* approach should be followed for Class II analysis was also applicable to Class III because the operable statutory language was nearly identical. *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024, 1030, n.6 (2nd Cir. 1990).

The Second Circuit rejected the state's argument that the negotiations should be restricted to the exact limits of state law, stating:

> The compact process is therefore to be invoked unless, applying the Cabazon test, it is determined that the state, 'as a matter of criminal law and public policy, prohibit[s] (class III) gaming activity.' § 2701(5). Absent such a conflict, the interests of the tribe and state are to be reconciled through the negotiation of a compact, . . .
>
> Under the State's approach, on the contrary, even where a state does not prohibit class III gaming as a matter of criminal law and public policy, an Indian tribe could nonetheless conduct such gaming only in accordance with, and by acceptance of, the entire state corpus of laws and regulations governing such gaming (footnote omitted). The compact process that Congress established as the centerpiece of the IGRA's regulation of class III gaming would

> thus become a dead letter, there would be nothing to negotiate, and no meaningful compact would be possible.

Mashantucket Pequot Tribe v. Connecticut, 913 F.2d 1024, 1030-1031 (2nd Cir. 1990).

The Second Circuit used the broad "civil regulatory/criminal prohibitory" approach to hold that *all* casino gaming was negotiable as a result of the state's charitable casino nights. The result has been the enormously successful Mashantucket Pequot Tribe casino at Foxwood, Connecticut which generates millions of dollars in economic development revenue for that tribe.

The Fifth Circuit adopted the broad "civil regulatory/criminal prohibitory" approach by reference when it affirmed without opinion the District Court's decision in *Willis v. Fordice*, 850 F.Supp. 523 (S.D. Miss. 1994), affirmed 55 F.3d 633 (1995). The issue was whether Class III gaming by the Mississippi Choctaws had to be conducted on navigable water because of such a limitation on other state gaming. Relying on *Mashantucket Pequot v. Connecticut*, 913 F.2d 1024 (2nd Cir. 1990) and the IGRA legislative history, the District Court held that the state restriction was not controlling. The tribe's Class III gaming did not have to be conducted on navigable waters. *Willis v. Fordice*, 850 F.Supp. 523 (S.D. Miss. 1994). The Fifth Circuit affirmed without opinion 55 F.3d 633 (1995).

The Seventh Circuit adopted the broad "civil regulatory/criminal prohibitory" approach by reference in *Forest County Potawatomi v. Norquist*, 45 F.3d 1079, 1083 (7th Cir. 1995) when it cited with approval the analysis in a

prior District Court decision in that Circuit. *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 770 F.Supp 480 (W.D. Wis. 1991), appeal dismissed 957 F.2d 515 (7th Cir. 1992). *Forest County Potawatomi* also gently rejected a suggestion it follow the Ninth Circuit's new narrow "specific state game" approach, *Forest County Potawatomi v. Norquist*, 45 F.3d at 1083, fn 1.

In *Lac du Flambeau* the Court was presented with a state gaming scheme almost identical to the one in this case. The state operated some types of lotteries (pulltabs, scratch-off games and on-line numbers games or lottos such as Lotto America and parimutuel betting on horse racing), *Lac du Flambeau v. Wisconsin*, 770 F.Supp at 483. Other lotteries such as slot machines or casino games were not permitted, *Lac du Flambeau v. Wisconsin*, 770 F.Supp at 484. In Wisconsin, as in Idaho, lotteries were defined as any game of prize, chance and consideration, *Lac du Flambeau v. Wisconsin*, 770 F.Supp at 486. *State v. Garden City*, 265 P.2d 328, 331 (Idaho 1953). Wisconsin's gaming scheme in *Lac du Flambeau* is nearly identical to Idaho's.

The Court in *Lac du Flambeau* analyzed the state's gaming policy with reliance on *Cabazon*, the Second Circuit's approach in *Mashantucket Pequot* and the Eighth Circuit approach in *U.S. v. Sisseton-Wahpeton Sioux Tribe*, 897 F.2d 358 (8th Cir. 1990). The Court in *Lac du Flambeau* (1) found the State's gaming policy to be civil regulatory, not criminal prohibitory; (2) that the State did not prohibit the "gaming activities" and (3) that the negotiations were *not* limited to "the identical types of games currently offered by the lottery board . . . " Specifically the Court found:

> It was not Congress' intent that the state would be able to impose their gaming regulatory schemes on the tribes.

Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin, 770 F.Supp. 480, 487 (W.D. Wis. 1991).

The District Court went on to hold that the state must negotiate all gaming activities which were "not prohibited expressly by the Wisconsin Constitution or state law." *Lac du Flambeau v. Wisconsin*, 770 F.Supp. at 488. The result has been the lucrative Indian casinos in the Milwaukee and Green Bay area which form the basis for tribal economic development in those areas.

The Eighth Circuit adopted the "broad civil regulatory/criminal prohibitory" approach in *U.S. v. Sisseton-Wahpeton Sioux Tribe*, 897 F.2d 358 (8th Cir. 1990). The issue there was whether blackjack had to be conducted in accordance with the state's "wager limits and other gaming constraints." *U.S. v. Sisseton-Wahpeton Sioux Tribe*, 897 F.2d at 363 (8th Cir. 1990). This case was decided under a Class II analysis because of a special grandfathering provision of IGRA, but as noted in *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024, 1030 n.6 (2nd Cir. 1990) the operable language of the two IGRA statutory provisions is nearly identical.

In *U.S. v. Sisseton-Wahpeton Sioux Tribe*, 897 F.2d 358 (8th Cir. 1990) the Eighth Circuit held:

> . . . [W]e believe that the legislative history reveals that Congress intended to permit a particular gaming activity, even if conducted in a manner inconsistent with state law, if the state law merely regulated, as opposed to completely barred, that particular gaming activity. . . .

> . . . The phrase 'for any purpose by any person, organization or entity' makes no distinction between State laws that allow class II gaming for charitable, commercial, or governmental purposes, or the nature of the entity conducting the gaming. If such gaming is not criminally prohibited by the State in which tribes are located, then tribes, as governments, are free to engage in such gaming. S.Rep.No. 100-446, supra, at 12, 1988 U.S. Code Cong. & Admin.News 3082 (emphasis added).

U.S. v. Sisseton-Wahpeton Sioux Tribe, 897 F.2d 358, 365 (8th Cir. 1990).

This Eighth Circuit decision was later distinguished in *Cheyenne River Sioux Tribe v. South Dakota*, 3 F.3d 273 (8th Cir. 1993) which adopted the narrow "specific state game" approach discussed below.

Regarding Class II gaming, the Ninth Circuit recently adopted the "broad civil regulatory/criminal prohibitory" approach in *Sycuan Band of Mission Indians v. Roache, et al.*, 54 F.3d 535 (9th Cir. 1995). The issue was whether a state could enforce its gaming criminal laws regarding electronic games on an Indian reservation. In concluding that the state could not, the Court examined the *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) broad "civil regulatory/criminal prohibitory test."

> We express no opinion concerning Class III, but at least insofar as the State's argument is directed at Class II-type gaming, of the sort engaged in by the Tribes in Cabazon Band, the state cannot regulate and prohibit, alternately, game by game and device by device, turning its public

> policy off and on by minute degrees. [Footnote omitted] Cabazon Band addressed the problem at a higher level of generality than that.

Sycuan Band of Mission Indians v. Roache, et al., 38 F.3d 402, 407 (9th Cir. 1994) (emphasis added). The Ninth Circuit specifically rejected this approach for Class III gaming in the recent modifications on denial of rehearing in *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 9th Cir. 93-16609, Slip Opinion at 9994, fn.4. Although the context of *Sycuan Band* is slightly different, the analytical principal employed is consistent with that used by the Second, Fifth, Seventh and earlier Eighth Circuit decision. All of these cases conclude that the question of what "gaming is permitted" should be addressed with a broad "civil regulatory/criminal prohibitory" approach, or at a "higher level of generality" than a "game by game" or "device by device" analysis.

The Eighth Circuit has now rejected the broad "civil regulatory/criminal prohibitory" approach in favor of a narrow "specific state game" approach to what is negotiable. In *Cheyenne River Sioux Tribe v. South Dakota*, 3 F.3d 273 (8th Cir. 1993) the Eighth Circuit considered the question of what was negotiable in an IGRA Class III Compact negotiation. The state played one form of Keno, but not another. The bet limit (consideration) was $5. The Eighth Circuit (1) ignored the extensive IGRA legislative history forming the basis of the cases discussed above, (2) held that a state need only negotiate the *exact type of a game* that it played, and (3) held that a state could refuse to negotiate pot size (consideration) that exceeded the state statutory limit.

> We agree with the state that it need not negotiate traditional keno if only video keno is permitted in South Dakota. The "such gaming" language of 25 U.S.C. § 2710(d)(1)(B) does not require the state to negotiate with respect to forms of gaming it does not presently permit. Because video keno and traditional keno are not the same and video keno is the only form of keno allowed under state law, it would be illegal, in addition to being unfair to the other tribes, for the tribe to offer traditional keno to its patrons. Therefore, we agree with the district court that the state did not refuse to negotiate in good faith on the tribe's operation of traditional keno.
>
> . . . The state distinguishes the "grandfathered" blackjack games at issue in U.S. v. Sisseton-Wahpeton Sioux Tribe, 897 F.2d 358 (8th Cir. 1990)(higher bet limits on games established before effective date of IGRA).
>
> We agree with the state that it need not negotiate regarding bet limits because bet limits are established by state law. The state is not obligated to allow the tribe to operate under bet limits higher than the state statutory limit of $5. Accordingly, we agree with the district court that the state did not refuse to negotiate in good faith on the issue of higher bet limits.

Cheyenne River Sioux Tribe v. South Dakota, 3 F.3d 273, 279 (8th Cir. 1993).

The Ninth Circuit followed the Eighth Circuit lead in adopting the narrow "specific state game" approach for Class III in *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 41 F.3d 421 (9th Cir. 1994). At issue in *Rumsey* was

a request by various Indian tribes to negotiate regarding various "Proposed Gaming Activities" which included electronic formats of games already conducted by the state in other formats, and live banking and card games that shared characteristics with gaming the state permitted. *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 41 F.3d at 424.

The Ninth Circuit cited *Cheyenne River Sioux Tribe v. South Dakota*, 3 F.3d 273 (8th Cir. 1993) and the District Court's opinion in *this* case, holding that the "Proposed Gaming Activities" were *not* negotiable because the state did not conduct the exact game in the exact way that the Tribes wanted to conduct it.

> The fact that California allows games that share some characteristics with banked and percentage card gaming – in the form of (1) banked and percentage games other than card games and (2) nonbanked, nonpercentage card games is not evidence that the State permits the Proposed Gaming Activities. Nor is it significant that the state lottery, if not technically a slot machine, is functionally similar to one. In Cheyenne River Sioux Tribe v. South Dakota, 3 F.3d 273 (8th Cir. 1993), a tribe sought to operate a traditional form of keno as well as casino-type gambling. When the State of South Dakota refused to negotiate, the tribe filed suit, arguing that the video keno and charity-run casino-type gaming were legal in the state. The Eighth Circuit rejected his argument. First, it found that the state permitted charities to operate bingo and raffles, but not casino-type gambling. Second, it held that the state need not negotiate traditional keno if only video keno is permitted

> in South Dakota. The "such gaming" language of 25 U.S.C. § 2710(d)(1)(B) does not require the state to negotiate with respect to forms of gaming it does not presently permit. Because video keno and traditional keno are not the same and video keno is the only form of keno allowed under state law, it would be illegal . . . for the tribe to offer traditional keno to its patrons. Id. at 279. The court thus concluded that South Dakota had not failed to negotiate in good faith by refusing to negotiate over traditional keno and casino-type gaming. Accord Couer [sic] D'Alene Tribe v. Idaho, 842 F.Supp. 1268, 1280 n. 9 (D.Idaho 1994).
>
> We agree with the approach taken by the Eighth Circuit. IGRA does not require a state to negotiate over one form of a gaming activity simply because it has legalized another, albeit similar form of gaming. Instead, the statute says only that, if a state allows a gaming activity "for any purpose by any person, organization, or entity," then it also must allow Indian tribes to engage in that same activity. 25 U.S.C. § 2710(d)(1)(B). In other words, a state need only allow Indian tribes to operate games that others can operate, but need not give tribes what others cannot have.

Rumsey Indian Rancheria Wintun Indians v. Wilson, 41 F.3d 421, 426-427 (9th Cir. 1994).[13]

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[13] The original *Rumsey* decision has been quoted at length because of the way the Ninth Circuit summarily disposed of this case below relying on that *Rumsey* decision. The wording of this passage has been slightly modified in the more recent *Rumsey* decision, but the reasoning and result are the same.

In *Rumsey, supra,* the Ninth Circuit went on to explain (1) why IGRA was unambiguous, making it unnecessary to look to the legislative history, (2) why the word "permits" had a different meaning in the Class III provision of 25 U.S.C. 2710(d)(1) than it did in the Class II provision of 25 U.S.C. 2710(b)(1) and (3) why the Second Circuit in *Mashantucket Pequot* was wrong in its analytical approach, though not in result. *Rumsey Indian Rancheria Wintun Indians v. Wilson,* 41 F.3d 421 (9th Cir. 1994).

There are now three Circuits (Second, Fifth and Seventh) which use the broad "civil regulatory/criminal prohibitory" approach for Class III gaming. Two other Circuits (Eighth and Ninth) use the broad "civil regulatory/criminal prohibitory" approach for Class II gaming, but the narrow "specific state game" approach for Class III gaming.

There exists a clear conflict between the Circuits regarding this important federal question. S.Ct. Rule 10(a), (c). It is appropriate that this conflict be resolved by granting this Writ.

C. Conflicting Approaches Applied to this Case

The impact of the conflict between the Circuits is readily apparent when the differing analytical approaches are applied to the State's two gaming schemes in this case.[14] If the broad "civil regulatory/criminal prohibitory" approach of the Second, Fifth and

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[14] A detailed explanation of the State's two gaming schemes is set out above in Statement of the Case at pp. 5-8 and will not be repeated here.

Seventh Circuits is used, then *all* Class III gaming is negotiable. If the narrow "specific state game" approach of the Eighth and Ninth Circuits is used, then no additional gaming is negotiable. Under the latter approach the present Compact contains all gaming which could have been negotiable.

All Class III gaming is negotiable when the Second, Fifth and Seventh Circuit's broad "civil regulatory/criminal prohibitory" approach is applied to the State's *original* scheme because (1) all lotteries are permitted if conducted by the State Lottery Commission which is statutorily exempted, I.C. 67-7447, from State statutes which otherwise restrict lotteries such as slot machines, (2) parimutuel betting is permitted without specific prohibition and (3) charitable games of chance are constitutionally permitted and not statutorily restricted.[15]

All Class III gaming is also negotiable when the Second, Fifth and Seventh Circuit's broad "civil regulatory/criminal prohibitory" approach is applicable to the state's *amended* gaming scheme because all gaming is permitted if the "prize" is "only additional play." The limitation on this one element of gaming does not alter the State's policy any more than a limitation on any other element (bet size) or the use to which gaming proceeds can be put (charitable purposes).

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[15] If the charitable game of chance constitutional provision is determined to not be self-effectuating, games of chance which are found to be not lotteries would not be negotiable if specifically prohibited in I.C. 18-3801 et seq. This is an issue to be resolved by the Courts below if the Writ is granted and the Ninth Circuit reversed.

In contrast, only the exact game played in the State would be negotiable under the Eighth and Ninth Circuit's narrow "specific state game" approach. Under both the original or amended state gaming schemes, negotiations would be limited to (1) the lotteries of the numbers game known as lotto (Powerball), pulltabs and scratch games and (2) parimutuel betting on horse, dog and mule racing. Lotteries such as slot machines would not be negotiable. Parimutuel betting on the racing of other animals such as donkeys would not be negotiable.[16]

The vastly different results from application of the Circuits' conflicting approaches are not unique to this case or this State's specific gaming schemes. A similar result would follow from almost any state's gaming scheme because each state scheme will allow some gaming and then place some limits. The question presented in this case has true national application.

A final point is that this case addresses only what is *negotiable*. In most every negotiation the number of items negotiated is much larger than the items agreed upon. Just because a particular game is negotiable does not mean it will be agreed upon in the Compact. As the Second Circuit noted, limiting the negotiations to the limits of state law would render meaningless the entire compacting process because " . . . there would be nothing to negotiate . . . " *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d at 1031.

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[16] A male donkey, when bred with a female horse, produces the sterile mule.

For the Class III compacting process to be meaningful, and for tribes to realize the economic development potential that Congress intended, the Eighth and Ninth Circuits narrow "specific state game" approach must be rejected in favor of the Second, Fifth and Seventh Circuits broad "civil regulatory/criminal prohibitory" approach.[17]

CONCLUSION

The Question Presented of what gaming is negotiable in an IGRA Class III gaming compact is certainly an important federal question. Like all Indian issues, Indian gaming is a federal matter. It is controlled by a federal statute. Indian gaming is a contentious issue between tribes and states which needs to be resolved.

The Circuits are divided on how the federal law should be interpreted and applied. The result has been that Indian tribes in some parts of the country are reaping

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[17] If the Writ is granted, an additional analytical approach, which was raised and rejected below, will also be discussed. It is the analytical approach employed in the dissent to the rejection to hear *Rumsey en banc*. It arises directly from the operable Class III statutory language of "*Class III gaming* activities shall be lawful on Indian lands only if such activities are . . . located in a state that permits *such gaming* for any purpose by any person, organization, or entity . . . " 25 U.S.C. 2710(d)(1) (emphasis added). The antecedent of "such gaming" is "Class III gaming." When the antecedent "Class III gaming" is substituted for "such gaming," the statute requires a state to negotiate *all* types of Class III gaming if it permits *any* Class III gaming. This analysis certainly seems to be the correct reading of the statute on its face.

the sizable economic rewards of gaming revenues, while Indian tribes in other parts of the country are unable to realize the same sort of economic prosperity. These differing results are based solely on the different way the various Circuits are interpreting and applying federal law. This is not right.

This important federal question is squarely and clearly presented in this case. It is not fact bound or limited by unique issues. The Circuits are divided. It is appropriate to grant this Petition for Writ of Certiorari.

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

COEUR D'ALENE TRIBE, *Plaintiff-Appellant,* and KOOTENAI TRIBE OF IDAHO; NEZ PERCE TRIBE, *Plaintiffs,* v. STATE OF IDAHO, *Defendant-Appellee.*	No. 94-35238 D.C. No. CV-92-00437-HLR ORDER

Appeal from the United States District Court
for the District of Idaho
Harold L. Ryan, District Judge, Presiding

Argued and Submitted
March 9, 1995 – Seattle, Washington

Filed April 6, 1995

Before: Harry Pregerson, Alex Kozinski,
and Edward Leavy, Circuit Judges.

COUNSEL

Raymond C. Givens, Givens, Funke & Work, Coeur d'Alene, Idaho, for the plaintiff-appellant.

David G. High, Deputy Attorney General, Boise, Idaho, for the defendant-appellee.

ORDER

The judgment of the district court is affirmed substantially for the reasoning advanced in its published opinion, 842 F.Supp. 1268 (Idaho 1994). Our affirmation also is based, in part, on our holding in *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 41 F.3d 421 (9th Cir. 1994).

In *Rumsey*, we held that the Indian Gaming Regulatory act, 25 U.S.C. § 2710(d)(1)(B), permits Class III gaming activities on Indian lands "only if such activities are . . . located in a State that permits such gaming for any purpose. . . . " *Id.* at 425. Thus, we conclude that where a state does not permit gaming activities sought by a tribe, "the tribe has no right to engage in those activities, and the state . . . has no duty to negotiate with respect to them." *Id.* In so concluding, we cited with approval Judge Ryan's well-reasoned opinion in the instant case. *Id.* at 427.

Because Idaho does not permit Class III gaming activities, we hold that the Coeur D'Alene Tribe has no right to engage in those activities.

AFFIRMED.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COEUR D'ALENE TRIBE, Plaintiff-Appellant, HLR and KOOTENAI TRIBE OF IDAHO; NEZ PERCE TRIBE, Plaintiffs, vs. STATE OF IDAHO, Defendant-Appellee.	)	No. 94-35238 D.C. No. CV-92-00437- ORDER (Filed May 19, 1995)

Before: PREGERSON, KOZINSKI, and LEAVY, Circuit Judges.

The panel as constituted in the above case has voted unanimously to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for a rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COEUR D'ALENE TRIBE, KOOTENAI TRIBE OF IDAHO, and NEZ PERCE TRIBE, Plaintiffs, v. STATE OF IDAHO, Defendant.	CIVIL NO. 92-0437-N-HLR DECLARATORY JUDGMENT (Filed Jan. 27, 1994)

Based on the findings and conclusions set forth in the Order on Cross-Motions for Summary Judgment entered on January 27, 1994, the court hereby enters the following DECLARATORY JUDGMENT:

1. The Supreme Court case of *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), and the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701, *et seq.* ("IGRA"), clearly restrict gaming on Indian lands to those types of games permitted by the state and/or those games which do not violate the law and public policy of the state.

2. The present law in Idaho, including the 1992 constitutional amendment, controls the court's analysis of what gaming is permitted by Idaho and what gaming is against the law and the public policy of the State.

3. The legislative history and case law establish that IGRA allows the State to negotiate with the Tribes with respect to such issues as wage and pot limits, days and hours of operation, and capacity of proposed gaming

facilities. Furthermore, it is clear that a focal point of compact negotiations is the question of the extent to which state regulations and/or a state regulatory system regarding particular gaming activities shall apply on Indian reservations.

4. Under the clear dictates of IGRA, the State cannot operate its lottery on tribal lands without appropriate compacts and tribal ordinances authorizing such Class III gaming by this non-tribal entity.

5. The State is only obligated to negotiate a compact with the Tribes regarding Class III games which are permitted and/or are not prohibited by the laws and public policy of the State. Neither the language of IGRA, the *Cabazon* case on which it is based, the legislative history and statement of purpose of the Act, nor the later federal cases interpreting the Act, can be read to allow the Tribes to conduct casino-type gaming on reservations in Idaho, when the laws and public policy of Idaho are so clearly against such gaming. The State is required to negotiate only as to those Class III gaming activities permitted under state law: a lottery and pari-mutual betting on horse, mule, and dog races.

DATED this 27th day of January, 1994.

/s/ Harold L. Ryan
HAROLD L. RYAN
SENIOR UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COEUR D/ALENE TRIBE, KOOTENAI TRIBE OF IDAHO, and NEZ PERCE TRIBE, Plaintiffs, v. STATE OF IDAHO, Defendant.	CIVIL NO. 92-0437-N-HLR ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT (Filed Jan. 27, 1994)

I. FACTS AND PROCEDURE

Plaintiffs in the above-entitled action, the Coeur d'Alene, Nex Perce, and Kootenai Indian tribes ("the Tribes") are federally-recognized Indian tribes having tribal lands within the State of Idaho. Defendant in this matter is the State of Idaho ("the State" or "Idaho"). The Tribes and the State seek a declaratory judgment regarding their respective rights and obligations under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701, *et seq.* ("IGRA"). The case has been submitted to the court for disposition on cross-motions for summary judgment. These motions have been fully briefed and a hearing was held on December 16, 1993.

Briefly, the facts of the case are as follows.[1] Since 1989, Idaho has operated a state lottery as a means of raising funds for public buildings and schools. The State

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[1] The following summary of the facts is based on the statements of undisputed facts submitted by the parties, and on certain undisputed facts gleaned from the record.

also licenses and regulates pari-mutuel betting on horse, mule, and dog races pursuant to state law. The present dispute between the Tribes and the State arises over the extent and types of gaming activities which the Tribes may conduct on their respective reservations. Economic conditions on the reservations are such that tribal leaders seek additional governmental revenue and employment for tribal members through Class III gaming.[2]

Pursuant to 25 U.S.C. § 2710(d)(3), the Coeur d'Alene Tribe asked the state on April 15, 1992, to enter into negotiations for the purpose of entering into a tribal-state compact governing Class III gaming activities on the Coeur d'Alene Reservation. The Kootenai and Nez Perce Tribes requested such negotiations with the State on June 8, 1992, and July 22, 1992, respectively. During the summer of 1992, Idaho called a special session of its legislature, enacted legislation, and drafted a proposed constitutional amendment changing Idaho law regarding gaming. The Tribes contend that these actions were taken to prevent them from conducting certain Class III gaming activities on their reservations.

Prior to 1988, Article III, Section 20 of the Idaho Constitution provided as follows: "The legislature shall not authorize any lottery or gift enterprise under any pretense or for any purpose whatever." Idaho Const. art. III, § 20 (amended 1988 and 1992). This provision was in effect until the late 1980s when certain groups within the State pushed for a change in Idaho law so that the State

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[2] As discussed more fully below, IGRA divides gaming into three categories: Class I, Class II, and Class III. *See* 25 U.S.C. § 2703(6), -(7) and -(8).

could operate a lottery. This movement culminated in 1988, when Idaho voters passed an amendment to Section 20. The 1988 amended version of Article III, Section 20 provided as follows:

> Gambling not to be authorized. – No game of chance, lottery, gift enterprise or gambling shall be authorized under any pretense or for any purpose whatever, except for the following:
>
> a. A state lottery which is authorized by the state if conducted in conformity with law; and
>
> b. Pari-mutuel betting if conducted in conformity with law; and
>
> c. Charitable games of chance which are operated by qualified charitable organizations in the pursuit of charitable purposes if conducted in conformity with law.

Idaho Const. art. III, § 20 (amended 1992). This provision was again amended by the voters of Idaho in November of 1992. Thus, the provision now reads as follows:

> Gambling Prohibited. – (1) Gambling is contrary to public policy and is strictly prohibited except for the following:
>
> a. A state lottery which is authorized by the state if conducted in conformity with enabling legislation; and
>
> b. Pari-mutuel betting if conducted in conformity with enabling legislation; and
>
> c. Bingo and raffle games that are operated by qualified charitable organizations in the pursuit of charitable purposes if conducted in conformity with enabling legislation.

> (2) No activities permitted by subsection (1) shall employ any form of casino gambling including, but not limited to, blackjack, craps, roulette, poker, bacarrat [baccarat], keno and slot machines, or employ any electronic or electromechanical imitation or simulation of any form of casino gambling.
>
> (3) The legislature shall provide by law penalties for violations of this section.

Idaho Const. art. III, § 20(1)-(3).

The Idaho criminal statutes regarding gambling were also changed in 1992. Former Idaho Code § 18-3801 provided as follows:

> 18-3801. Gambling. – Every person who deals, plays or carries on, opens or causes to be opened, or who conducts, either as owner, employee, or lessee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noir, rondo, Indian stick game, or any game played with cards, dice or any other device for money, checks, credit or any other representative of values, is guilty of a misdemeanor and is punishable by fine not less than $200 nor more than $1,000 or imprisonment in the county jail not less than two (2) months nor more than twelve (12) months or both such fine and imprisonment.

Idaho Code § 18-3801 (1972) (amended 1992).

Idaho code §§ 18-3801 and -3802 now provide as follows:

> 18-3801. Gambling defined. – "Gambling" means risking any money, credit, deposit or other thing of value for gain contingent in

whole or in part upon lot, chance, the operation of a gambling device or the happening or outcome of an event, including a sporting event, the operation of casino gambling including, but not limited to, blackjack, craps, roulette, poker, bacarrat [baccarat] or keno, but does not include:

(1) Bona fide contests of skill, speed, strength or endurance in which awards are made only to entrants or the owners of entrants; or

(2) Bona fide business transactions which are valid under the law of contracts; or

(3) Games that award only additional play; or

(4) Merchant promotional contests and drawings conducted incidentally to bona fide nongaming business operations, if prizes are awarded without consideration being charged to participants; or

(5) Other acts or transactions now or hereafter expressly authorized by law.

18-3802. Gambling prohibited. – (1) A person is guilty of gambling if he:

(a) Participates in gambling; or

(b) Knowingly permits any gambling to be played, conducted or dealt upon or in any real or personal property owned, rented, or under the control of the actor, whether in whole or in part.

(2) Gambling is a misdemeanor.

Idaho Code §§ 18-3801 and 18-3802 (Supp. 1993).

After the voters passed the final amendment to Article III, Section 20 on November 3, 1992, the Nez Perce Tribe brought suit challenging that amendment on the grounds that the State failed to set forth an adequate and truthful statement of the purpose of the proposed amendment on the ballot as required under Idaho law. In a recent decision, the Idaho Supreme Court upheld the amendment, declaring that the statement of purpose placed on the ballot was sufficient and that the amendment was properly presented for voter approval on the November 3, 1992, election ballot. *See Nez Perce Tribe v. Cenarrusa,* No. 20281, 1993 WL 390410 (Idaho Oct. 5, 1993).

After numerous negotiation sessions, the Coeur d'Alene Tribe and the State entered into a partial compact in December of 1992, covering all matters which could be agreed upon. No compacts have been entered into between the State and the Kootenai and Nez Perce Tribes. The present suit was filed because negotiations between the State and all three Tribes have reached an impasse regarding Class III gaming. The Tribes have expressed their intent to engage in extensive Class III gaming activities, including casino-style gambling, which the State contends are prohibited under Idaho law and public policy. Since negotiations began, the State has taken the position that it is only required to negotiate Class III activities permitted under Idaho law. Thus, the State has agreed to negotiate only as to a lottery and pari-mutuel betting on horse, mule, and dog races.

Each of the Tribes has filed a separate complaint in the action, but they have filed a joint motion for summary

judgment supported by joint memoranda. In their complaints, the Tribes claim that the State has violated IGRA by refusing to negotiate Class III games, by attempting to prevent the Tribes from conducting Class III games, by attempting to impose restrictions on Indian gaming greater than those imposed upon its own lottery and racing commissions, and by attempting to give retroactive effect to changes in state law made after the requests for negotiations were made by the Tribes. The Tribes also allege that the State cannot conduct its lottery on reservation lands without a tribal ordinance or resolution and a tribal-state compact authorizing the State to do so.

The court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1362.[3] The State has consented to this suit and has waived any objection to jurisdiction based on immunity from suit under the Eleventh Amendment to the United States Constitution. In addition, the dispute between the parties arising from the negotiation of gaming compacts is an actual controversy warranting declaratory relief. *See Oneida Tribe of Indians v. Wisconsin*, 951 F.2d 757, 759 (7th Cir. 1991).

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[3] Title 28 U.S.C. § 1362 provides that "[t]he district courts shall have original jurisdiction of all civil actions brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States." 28 U.S.C.S. § 1362 (Law. Co-op. 1988). It is undisputed that the Tribes are federally recognized Indian tribes within the meaning of IGRA. *See* 25 U.S.C. § 2703(5).

II. ANALYSIS

A. The Summary Judgment Standard

Motions for summary judgment are governed by Rule 56 of the Federal Rules of Civil Procedure. Rule 56 provides, in pertinent part, that judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

The Supreme Court has made it clear that under Rule 56 summary judgment is mandated if the non-moving party fails to make a showing sufficient to establish the existence of an element which is essential to his case and upon which he will bear the burden of proof at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). If the nonmoving party fails to make such a showing on any essential element of his case, "there can be no 'genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Id.* at 323.[4]

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[4] *See also* Rule 56(e), which provides in part:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if

Moreover, under Rule 56, it is clear that an issue, in order to preclude entry of summary judgment, must be *both* "material" and "genuine." An issue is "material" if it affects the outcome of the litigation. An issue, before it may be considered "genuine," must be established by "sufficient evidence supporting the claimed factual dispute . . . to require a jury or judge to resolve the parties' differing versions of the truth at trial." *Hahn v. Sargent*, 523 F.2d 461, 464 (1st Cir. 1975) (*Quoting First Nat'l Bank v. Cities Serv. Co., Inc.*, 391 U.S. 253, 289 (1968)). The Ninth Circuit cases are in accord. *See e.g., British Motor Car Distrib. v. San Francisco Automotive Indus. Welfare Fund*, 882 F.2d 371 (9th Cir. 1989).

According to the Ninth Circuit, in order to withstand a motion for summary judgment, a party

> (1) must make a showing sufficient to establish a genuine issue of fact with respect to any element for which it bears the burden of proof; (2) must show that there is an issue that may reasonably be resolved in favor of either party; and (3) must come forward with more persuasive evidence than would otherwise be necessary when the factual context makes the non-moving party's claim implausible.

Id. at 374 (citation omitted).

The parties agree that there are no disputed issues of material fact and that this matter may be resolved by summary judgment.

> appropriate, shall be entered against the adverse party.

Fed R. Civ. P. 56(e).

B. Pending Motions for Summary Judgment

1. Issues.

Resolution of this dispute turns on the following issue: The Tribes contend that because Idaho permits and/or does not prohibit certain forms of Class III gaming, the Tribes are free to conduct any and all forms of Class III gaming, including casino gambling, on their reservations. Idaho contends that the Tribes may conduct only those specific forms of Class III gaming which are permitted and/or are not prohibited under the law and public policy of the State.

The Tribes have asked the court to enter a declaratory judgment as to the following specific issues:

1. Does IGRA impose any restriction on the type of Class III gaming the Tribes may conduct in light of Idaho's gaming scheme?

2. In examining the Idaho gaming scheme under IGRA, should the court use the present Idaho gaming scheme or the scheme in effect in April 1992 when the IGRA gaming compact negotiations were initiated?

3. Under IGRA can a state insist upon restrictions which limit the opportunity for the economic self-sufficiency of a Tribe?

4. Under IGRA can a state conduct its own lottery on Indian lands without a compact with that Tribe?

See Mem. Supp. Pls.' Mot. for Summ. J., filed June 25, 1994, at 1.

2. Introduction to IGRA and Indian Gaming.

When Congress enacted IGRA in 1988, it made the following findings:

> (1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;
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> . . . .
>
> (3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;
>
> (4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and
>
> (5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and *is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.*

25 U.S.C.S. § 2701 (Law. Co-op. 1983 & Supp. 1993) (emphasis added).[5]

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[5] After setting forth the preceding findings, Congress then explained the purposes of IGRA:

> (1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;
>
> (2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from

IGRA divides gaming into three categories. Class I includes "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations." *Id.* § 2703(6). Class I gaming is under the exclusive jurisdiction of Indian tribes and is not subject to the regulatory provisions of IGRA. 25 U.S.C. § 2710(a)(1).

Class II gaming is defined as

> the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) . . . including, (if played in the same location) pull tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and . . . card games that (I) are explicitly authorized by the laws of the State, or (II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

25 U.S.C.S. § 2703(7)(A)(i)(III), -(ii) (Law. Co-op. 1983 & Supp. 1993). Class II gaming does not include "any banking card games, including baccarat, chemin de fer, or

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> organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players. . . .

25 U.S.C.S. § 2702 (Law. Co-op. 1983 & Supp. 1993).

blackjack (21), or . . . electronic or electromechanical facsimiles of any game of chance or slot machines of any kind." *Id.* § 2703(7)(B). Indian tribes have jurisdiction over Class II gaming, subject to the requirements of IGRA and the oversight of the National Indian Gaming Commission. 25 U.S.C. § 2710(b).

Class III gaming includes all forms of gaming that are not Class I or Class II gaming. 25 U.S.C. § 2703(8). Only Class III gaming is at issue in this case. Although the Tribes have not listed the specific games they wish to conduct, they have made it clear that they intend to operate casinos on their reservations. Therefore, the court will assume that the Tribes intend to conduct card and dice games, baccarat, roulette, keno and slot machines, and all other traditional forms of casino gambling, or the electronic or electromechanical equivalent thereof.

With respect to Class III gaming, IGRA provides as follows:

> Class III gaming activities shall be lawful on Indian lands only if such activities are . . . authorized by [tribal] ordinance or resolution . . . located in a State that permits such gaming for any purpose by any person, organization, or entity, and . . . conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State. . . .

25 U.S.C.S. § 2710(d)(1) (Law. Co-op. 1983 & Supp. 1993). IGRA requires that, prior to engaging in Class III gaming, a compact covering such gaming must be negotiated and agreed upon by the Indian tribe and the state in which the tribal lands are located. 25 U.S.C. § 2710(d)(3)(A). The

compact must then be approved by the Secretary of Interior. 25 U.S.C. § 2710(d)(3)(B).

3. Background of IGRA – The Cabazon Decision and Legislative History.

Prior to enactment of IGRA, the United States Supreme Court handed down its decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). The *Cabazon* case set the standard for resolving disputes between Indian tribes and states regarding gaming on tribal lands. In *Cabazon*, California sought to impose state restrictions on the Indian tribes' bingo operations and to prohibit the playing of draw poker and other card games on the reservation. *Id.* at 205-06. The tribes brought suit seeking a declaratory judgment that the state had no authority to apply its gaming laws inside the reservation.

In its decision, the Supreme Court first noted that Indian tribes retain the attributes of sovereignty over their members and lands. *Id.* at 207. Such sovereignty is subordinate only to the federal government and not to the states. *Id.* The Court then explained that if Congress expressly provides, state laws can be applied on reservations. California argued that Congress had done just that in Public Law 280, enacted in 1953, 67 Stat. 588 (codified as amended at 18 U.S.C. § 1162 (1970) and 28 U.S.C. § 1360 (1984)). The Court disagreed, pointing out that while Public Law 280 granted broad criminal jurisdiction over offenses committed by or against Indians within the reservations, the statute's grant of civil jurisdiction was much more limited. *California v. Cabazon Band of Mission Indians*, 480 U.S. at 207. The Court noted that in *Bryan v.*

Itasca County, 426 U.S. 373 (1976), it had held that while Public Law 280 granted states jurisdiction over private civil litigation involving reservation Indians in state court, it did not convey general civil regulatory authority. *Cabazon*, 480 U.S. at 208. The Court then declared:

> We recognized [in *Bryan*] that a grant to States of general civil regulatory power over Indian reservations would result in the destruction of tribal institutions and values. Accordingly, when a State seeks to enforce a law within an Indian reservation under the authority of Pub L 280, it must be determined whether the law is criminal in nature, and thus fully applicable to the reservation . . . or civil in nature, and applicable only as it may be relevant to private civil litigation in state court.

Id.

The Court then noted the distinction between state "criminal/prohibitory" laws and state "civil/regulatory" laws, describing the distinction as follows:

> [I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub L 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub L 280 does not authorize its enforcement on an Indian reservation. *The shorthand test is whether the conduct at issue violates the State's public policy.*

Id. at 209 (emphasis added). The Court also declared that although "an otherwise regulatory law is enforceable by criminal as well as civil means does not necessarily convert it to a criminal law. . . . " *Id.* at 211.

The Supreme Court then carefully reviewed California gambling laws and concluded that "Caliafornia [sic] regulates rather than prohibits gambling in general and bingo in particular." *Id.* The Court ultimately held that because California only regulated non-Indian bingo and card-playing operations, the tribes were free to engage in those particular gaming activities and were not required to adhere to state regulations regarding such activities.

The *Cabazon* decision is noted in the legislative history of IGRA and is incorporated in the final statutory language of the Act. The Senate Report discussing the requirement that Class II gaming on Indian lands be allowed only if "located within a State that permits such gaming for any purpose by any person, organization or entity," 25 U.S.C.S. § 2710(b)(1)(A) (Law. Co-op. 1983 & Supp. 1993), refers expressly to the *Cabazon* decision.

> [T]he Committee anticipates that Federal courts will rely on the distinction between State criminal laws which prohibit certain activities and the civil laws of a State which impose a regulatory scheme upon those activities to determine whether class II games are allowed in certain States. This distinction has been discussed by the Federal courts many times, most recently and notably by the Supreme Court in *Cabazon.*
>
> * * * *
>
> The phrase "for any purpose by any person, organization or entity" makes no distinction between State laws that allow class II gaming for charitable, commercial, or governmental purposes, or the nature of the entity conducting the gaming. *If such gaming is not criminally prohibited by the State in which tribes are located, then*

> *tribes, as governments, are free to engage in such gaming.*

See Mem. Supp. Pls.' Mot for Summ. J., filed June 25, 1993, App. Part I, Ex. A2 (S. Rep. No. 446, 100th Cong., 2d Sess.) at A-6 and A-12. (emphasis added).[6]

The *Cabazon* decision does not address the situation confronting the court in the present action. Nevertheless, it is clear that the prohibitory/regulatory analysis contained in *Cabazon* must guide the court in resolving this dispute. Therefore, the court must evaluate Idaho law and public policy on gambling.

4. Which Idaho Law Applies?

The Tribes argue that the court must assess Idaho law and public policy as it was in the spring and summer of 1992, when the Tribes first requested negotiations on Class III gaming. The State contends that the laws not in effect should govern the compact negotiations. The Tribes base their argument on the following grounds: (1) IGRA does not allow a state to restrict Indian gaming by modifying its laws; (2) retroactive application of changes in state law cannot be allowed to deprive the Tribes of

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[6] Although the Senate Report addresses the phrase found in 25 U.S.C. § 2710(b)(1)(A), the identical phrase is used in Section 2710(d)(1)(B), and therefore, also applies to Class III gaming. *See Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024, 1030 (2d Cir. 1990). "It is a settled principle of statutory construction that '[w]hen the same word or phrase is used in the same section of an act more than once, and the meaning is clear as used in one place, it will be construed to have the same meaning in the next place.' " *Id.* (citations omitted).

vested rights; and (3) the constitutional amendment ratified by the voters in 1992 is invalid because it was not adopted in accordance with Idaho law. The court need not address this third point because the Idaho Supreme Court has now upheld the amendment, and this court will defer to the findings and judgment of the Idaho Supreme Court as to the legality of the 1992 amendment process.

The Tribes contend that "Congress, in enacting IGRA, did not grant states authority to restrict Indian gaming by modifying [their] laws." Mem. Supp. Pls.' Mot. for Summ. J., filed June 25, 1993, at 27. The Tribes offer no authority to support their claim that IGRA precludes a state from changing its gaming laws prior to entering into a compact. IGRA is entirely silent on this issue. It appears that the basis of Tribes' argument is their feeling that the State has acted in an unfair and underhanded manner in changing its laws in the summer and fall of 1992.

The Tribes contend that they have been singled out for unfair treatment. The court does not agree. The 1992 changes in Idaho law apply equally to the State, to the Tribes, and to all other groups and individuals. The changes were made to make clear that only a lottery, parimutuel betting, and bingo and raffle games are permitted in Idaho. All other forms of gambling are expressly prohibited to everyone, including both the State and the Tribes. It would be a much different question if Idaho had attempted to create a situation in which the State alone could engage in casino gambling and all other groups, including Indian tribes, could not. However, this is not the case. In fact, such a situation could never occur.

Under IGRA, if the State were to engage in casino gambling, or permit any group or entity to do so, the Tribes could also engage in casino gambling. *See* 25 U.S.C. § 2710(d)(1)(B).

Under IGRA, the law and public policy of the state set the scope of permissible Class III gaming on tribal lands. IGRA certainly does not command that a state may not change its gaming laws or amend its constitution prior to entering into a compact. There is nothing in IGRA which would prevent Idaho from abolishing and criminally prohibiting *all* Class III gaming entirely.

The Tribes also contend that the State could not change its gaming laws after compact negotiations were requested because to do so would deprive them of vested rights. The Tribes have not argued this point clearly, but it appears that their position is as follows. At the time the Tribes requested compact negotiations, they acquired a vested right to conduct any and all Class III gaming permitted under Idaho law at that time. Thus, the Tribes contend that to resolve this dispute under Idaho law as it now stands would mean giving retroactive effect to the 1992 changes in the law, depriving the Tribes of a vested right.[7]

The court is not persuaded that the Tribes had any vested rights with respect to particular Class III gaming

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[7] The Tribes also speak of their vested right of self-government and tie that to their right to conduct gaming subject only to the limitations of IGRA. The court certainly recognizes the right of the Tribes to self-government and to conduct their own affairs on their reservations. However, the question of what the limitations of IGRA are is at the heart of this dispute.

activities. First, as noted above, there is nothing in IGRA which precludes a state from changing its gaming laws and negotiating compacts accordingly. Second, IGRA does not provide that an Indian tribe acquires rights of any kind at the moment compact negotiations are requested. On the contrary, IGRA makes it clear that the Tribes have no right, vested or inchoate, to conduct Class III games until a compact has been negotiated with the state. *See* 25 U.S.C. § 2710(d)(1)(C). Therefore, the only time an Indian tribe could arguably claim a vested right to conduct a particular form of Class III gaming would be after a compact between the tribe and state addressing the particular form of gaming had been entered into and finally approved.

In summary, the court finds that the proper scope of compact negotiations shall be determined by looking to Idaho law and public policy as they now stand, rather than reverting to Idaho law as it was at the time the Tribes first requested compact negotiations.

5. Scope of Negotiations.

The State maintains that it is only required to negotiate with the Tribes with respect to the specific Class III gaming activities which are permitted under Idaho law. The Tribes contend that because Idaho permits some forms of Class III gaming, its policy toward Class III gaming as a class is regulatory rather than prohibitory, and therefore, the Tribes are free to engage in *all* forms of Class III gaming, including casino gambling and keno and slot machines, and the State must negotiate accordingly. In the words of counsel for the Tribes:

> Since IGRA was passed, several federal courts have ruled on the issues present in this case. They uniformly follow the *Cabazon* rule, holding that a state "permits" a gaming activity if it has a public policy promoting that gaming activity. Thus, the games "permitted" within a state for IGRA purposes need not be limited to only those games presently operated by that state.

Mem. Supp. Pls.' Mot. for Summ. J., filed June 25, 1993, at 20.

The Tribes rely primarily on four cases: *United States v. Sisseton-Wahpeton Sioux Tribe,* 897 F.2d 358 (8th Cir. 1990); *Mashantucket Pequot Tribe v. Connecticut,* 913 F.2d 1024 (2d Cir. 1991), *cert. denied,* ___ U.S. ___, 111 S.Ct. 1620, 113 L.Ed 2d 717 (1001); *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin,* 770 F.Supp. 480 (W.D.Wis. 1991); and *Ysleta Del Sur Pueblo v. Texas,* No. P-93-CA-29 (W.D. Tex. 1993). The court has thoroughly reviewed these cases, as well as all of the other cases, both pre-IGRA and post-IGRA, which have addressed the scope of permissible gaming on Indian reservations. Upon this review, the court finds that all of the cases uniformly support the position taken by the State.

All of the courts have followed the regulatory/prohibitory distinction established by the Supreme Court in *Cabazon.* In the four cases relied on by the Tribes, the courts conducted a broad review of the laws and public policy of each state and concluded that the *specific* gaming activity at issue was permitted by the particular state.

In *United States v. Sisseton-Wahpeton Sioux Tribe,* 897 F.2d 358 (8th Cir. 1990), the Indian tribe established a

blackjack operation on its reservation in South Dakota on April 15, 1988. *Id.* at 359. The same day the tribe opened its blackjack operation, it filed a complaint in district court seeking a declaration of its legal right to run the operation. *Id.* IGRA then became effective on October 17, 1988. IGRA contains a grandfather clause which accords Class II treatment to card games already in existence at the time of enactment.[8] The Eighth Circuit Court of Appeals held that the tribe had not altered the nature and scope of its blackjack operation since May 1, 1988, and that the operation would therefore be classified as Class II gaming because of the grandfather provision. *Id.* at 363.

The Eighth Circuit then reviewed the district court's holding that the blackjack operation was unlawful, even if classified as Class II gaming, because it was not conducted in compliance with wage limits and other requirements set by South Dakota law. That case, like the case at hand, turned on the proper interpretation of the phrase "permits such gaming for any purpose by any person, organization or entity." 25 U.S.C.S. § 2710(d)(1) (Law. Co-op. 1983 & Supp. 1993). The Eighth Circuit addressed the

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[8] Notwithstanding any other provision of this paragraph, the term "class II gaming" *includes* those card games played in the State of Michigan, the State of North Dakota, *the State of South Dakota,* or the State of Washington, that were actually operated in such State by an Indian tribe *on or before May 1, 1988,* but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date. . . .

25 U.S.C.S. § 2703(7)(C) (Law. Co-op. 1983 & Supp. 1993) (emphasis added).

case by focusing on the *particular gaming activity* – blackjack. The court did not hold that the case turned on whether or not a particular *class* of gaming was permitted by the state. "[W]e believe that the legislative history reveals that Congress intended to permit a *particular gaming activity*, even if conducted in a manner inconsistent with state law, if the state merely regulated, as opposed to completely barred, *that particular gaming activity.*" *United States v. Sisseton-Wahpeton Sioux Tribe*, 897 F.2d at 365 (emphasis added).

The court went on to hold that because South Dakota permitted commercial card games, including blackjack, the Indian tribe could also conduct a blackjack operation. This decision is entirely consistent with the position advanced by Idaho in the case at hand. Idaho asks the court to focus not only whether Class III gaming as a *class* is permitted in Idaho, but rather on what *particular Class III gaming activities* are permitted under Idaho law, and compare that to the particular gaming activities sought to be conducted by the Tribes.

In *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024 (2d Cir. 1991), *cert. denied*, ___ U.S. ___, 111 S.Ct. 1620, 113 L.Ed 2d 717 (1991), the Indian tribe sought to conduct casino-type gaming activities on its reservation and the state refused to negotiate a compact regarding such activities. *Id.* at 1025. The court reviewed Connecticut law and noted that Connecticut allowed non-profit charitable organizations to conduct casino gambling on so-called "Las Vegas Nights" for charitable purposes. In light of 25 U.S.C. § 2710(d)(1)(B), the court ruled that the state was required to negotiate with the tribe regarding the conduct of casino-type games of chance because the

state permitted other organizations and entities to engage in such activities. *Id.* at 1032. The state would not have had to negotiate casino-type gaming had it prohibited such gaming to *all* persons, organizations, and entities within the state.

In *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 770 F.Supp. 480 (W.D.Wis. 1991) (hereafter "*Lac du Flambeau II*"), Indian tribes and the State of Wisconsin disagreed over whether the state was required to include casino games, video games, and slot machines in its negotiations with the tribes. *Id.* at 482. The state constitution was amended in 1987. As amended, the constitution authorized a state lottery and pari-mutuel betting and did not prohibit other forms of gaming involving the elements of prize, chance, and consideration. *Id.* at 486. Thus, the court concluded that "the state is required to negotiate with plaintiffs over the inclusion in a tribal-state compact of any activity that includes the elements of prize, chance and consideration and *that is not prohibited expressly by the Wisconsin Constitution or state law.*" *Id.* at 488 (emphasis added). Given the broad definition of lottery and the fact that Wisconsin law no longer had any express prohibition against games involving the elements of prize, chance, and consideration, Wisconsin was required to negotiate regarding the games proposed by the tribes.

At least one other court has noted that the court in *Lac du Flambeau II* took a more expansive view of the *Cabazon* decision than had previous courts, and declined to follow *Lac du Flambeau II*:

> To some extent, the court in *Lac du Flambeau II* utilized a different interpretation of *Cabazon*. . . . For example, the court observed:
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> > If the policy is to prohibit all forms of gambling by anyone, then the policy is characterized as criminal-prohibitory and the state's criminal laws apply to tribal gaming activity. On the other hand, if the state allows some forms of gambling, even subject to extensive regulation, its policy is deemed to be civil-regulatory and it is barred from enforcing its gambling laws on the reservation.
>
> This approach is broader than the one employed by the Supreme Court in *Cabazon* and other courts which have faced the same question and, to the extent the court in *Lac du Flambeau II* based its conclusion on that analysis, we decline to follow its lead.

Seminole Tribe of Florida v. Florida, No. 91-6756-CIV-MARCUS, Order at 15-16 (S.D.Fla. Sept. 22, 1993) (*quoting Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 770 F.Supp. at 485) (footnote omitted). The court in *Seminole Tribe of Florida* went on to declare that:

> [T]he thrust of *Cabazon* and its progeny requires a *particularized inquiry into the proposed gambling activity* (in this case, casino gambling and machine or computer-assisted gaming). For example, in *Cabazon*, where California ran a state lottery and permitted parimutuel betting, the lower courts and the Supreme Court looked at the state's public policy regarding bingo, *the specific gambling activity at issue*. Thus, we do not agree that *Lac du Flambeau II* dictates the outcome of the instant case, without a review of the

> State's public policy toward gambling in general and its public policy toward *the specific gaming activities in question.*

Seminole Tribe of Florida v. Florida, No. 91-6756-CIV-MARCUS, Order at 16 n.1 (S.D.Fla. Sept. 22, 1993).

This court agrees with the approach taken by the court in *Seminole Tribe of Florida.* In addition, the *Lac du Flambeau II* case is distinguishable from the case at hand because the Idaho Constitution *expressly prohibits* all forms of casino gambling and/or the electrical or electromechanical imitation or simulation of any form of casino gambling. The constitution also directs the legislature to provide criminal penalties for violation of this prohibition against such gaming.

In the final decision relied on by the Tribes, *Ysleta Del Sur Pueblo v. Texas*, No. P-93-CA-29 (W.D.Tex. Nov. 1, 1993) (Memorandum Opinion & Order), the State of Texas refused to negotiate with the plaintiff Indian tribe regarding casino-type games. The tribe sought to engage in blackjack, roulette, baccarat, craps, and slot machines, including electronic and electromechanical games of chance. *Id.* at 15. The court noted that Texas allowed bingo, pari-mutuel betting on horse and dog races, charitable raffles, the state lottery, mechanical games of chance so long as the reward is a non-cash prize of no more than $5.00, wagers on carnival contests so long as the prize is limited to merchandise worth less than $25.00, and private social gambling if conducted in private with even chances and risks and no bank. The court then held that Texas no longer had a broad public policy against gambling. *Id.* at 13.

The term "lottery" is broadly defined in Texas. *See* Tex. Rev. Stat. Ann. art. 179g, § 1.02(s) (Vernon Supp. 1992), *quoted in Ysleta Del Sur Pueblo v. Texas*, No. P-93-CA-29, (W.D.Tex. Nov. 1, 1993) Mem. Op. & Ord. at 16. Although Texas could authorize casino gambling under its broad definition of lottery, it argued that the Indian tribe could not engage in casino gambling because such gambling was not actually played or allowed in Texas. The court pointed out that the proper focus was on whether Texas permitted such gaming by any person, organization, or entity. The court agreed with the decision in *Seminole Tribe of Florida*, declaring that "just because the state allows *some types* of Class III gaming to occur the state is not required to engage in negotiations over *all types* of Class III gaming activities." *Ysleta Del Sur Pueblo v. Texas*, No. P-93-CA-29, (W.D.Tex. Nov. 1, 1993), Mem. Op. & Ord. at 17-18 (emphasis added).

The court then noted that the only restriction in Texas law as to the operation of the state lottery was that the State Lottery Act only excluded "video forms of casino games, not the live or other non-video electronic games." *Id.* at 18. The court also found that a limited form of casino-type gaming could occur under what it referred to as the "carnival exception," and that charitable organizations could also use this exception. *Id.* at 19. The court then concluded as follows:

> Because casino gaming is permitted by some persons and individuals under the carnival exception, and based on the definition of "lottery" in the Texas Lottery Act allowing games which include chance, prize, and consideration, the Court is of the opinion that the

> casino games requested by the Tribe should be included in the negotiations of a Tribal-State Compact under the IGRA.

Id. at 20.

Again, the Texas case is distinguishable from the case at hand because the Idaho Constitution expressly prohibits the state lottery commission (and all others) from employing any form of casino gambling, or from employing any form of electrical or electromechanical imitation or simulation of any form of casino gambling. In addition, there is no "carnival exception" in Idaho, nor does Idaho permit charitable "Las Vegas Nights."

The court in *Ysleta Del Sur Pueblo* concurred with the position now advanced by Idaho – that just because the State permits *some* forms of Class III gaming, does not mean that it must negotiate as to *all* forms of Class III gaming. Other recent federal court decisions also agree with this position. In *Seminole Tribe of Florida*, the court, after reviewing the same cases discussed above, held as follows:

> In sum, we can find no convincing support in these cases for the Tribe's suggestion that a state's public policy permitting individual Class III activities is somehow equivalent to permitting all Class III gaming activities. Indeed, two other courts recently reached the same conclusion regarding the 'permits such gaming' language and Class III gaming activities.

Seminole Tribe of Florida v. Florida, No. 91-6756-CIV-MARCUS, (S.D.Fla. Sept. 22, 1993) Ord. at 16.

The Florida court was referring to the decisions in *Cheyenne River Sioux Tribe v. South Dakota*, 3 F.3d 273 (8th Cir. 1993); and *Rumsey Indian Rancheria v. Wilson*, No. CIV-S-92-812-GEB (E.D.Calif. July 16, 1993). In *Cheyenne River*, the court noted that since 1989 South Dakota had allowed state lotteries, video lotteries, limited card games, pari-mutuel horse and dog racing, and simulcasting. *Cheyenne River Sioux Tribe v. South Dakota*, 3 F.3d at 276. An important part of the dispute centered around the tribe's proposal to conduct traditional keno games on its reservation. South Dakota law permitted only video keno games to be conducted. Therefore, the state refused to include traditional keno gaming in the compact negotiations. In resolving this dispute, the Eighth Circuit Court of Appeals held as follows:

> We agree with the state that it need not negotiate traditional keno if only video keno is permitted in South Dakota. The "such gaming" language of 25 U.S.C. § 2710(d)(1)(B) does not require the state to negotiate with respect to forms of gaming it does not presently permit. Because video keno and traditional keno are not the same and video keno is the only form of keno allowed under state law, it would be illegal, in addition to being unfair to the other tribes, for the tribe to offer traditional keno to its patrons. Therefore, we agree with the district court that the state did not refuse to negotiate in good faith on the tribe's operation of traditional keno.

Id. at 279.[9]

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[9] The circumstances and holding in the *Cheyenne River* case also apply to a similar dispute between Idaho and the Tribes in

Rumsey Indian Rancheria v. Wilson is also in accord with the position advanced by Idaho:

> At the outset, the court must decide whether, under the IGRA and *Cabazon* Class III games are considered collectively or individually when determining whether they are an appropriate subject of a Tribal-State compact. Plaintiffs argue that if California permits *any* Class III games to be played, all Class III games should be negotiable in a Tribal-State compact. The State contends that Class III is "less a category than a residuum" and urges an activity by activity analysis. Class III includes a wide variety of games and legislative history and prior cases demonstrate that the "activity" is not to be too narrowly defined. Courts which have applied the *Cabazon* prohibitory/regulatory distinction have conducted a broad review of the state's gaming laws but are careful to examine the specific gaming activity which has been proposed. . . . This court has found no authority for the proposition that a state's public policy construed as permitting a single Class III game must be found to permit all Class III gaming

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the present case. The Tribes argue that because the Idaho lottery uses scratch and pull-tab games with poker and/or other casino gambling themes, they should be allowed to engage in actual casino gambling, offering the same games on which the lottery tickets are based.

The court disagrees. There is a considerable difference between a lottery ticket with a poker theme and a live, banked card game at a casino. Idaho law clearly prohibits any banked or percentage card games or other forms of casino gambling from being played by any person for any purpose. However, the Tribes may certainly conduct their lotteries in the same fashion as the State.

> activities. Accordingly, this court adopts the method of review used by other courts. . . .

Rumsey Indian Rancheria v. Wilson, No. CIV-S-92-812-GEB (E.D.Calif. July 16, 1993), Ord. on Cross-Mot. for Summ. J., at 15-16 n.16 (citations omitted).

The Idaho Constitution expressly declares that all gambling is contrary to public policy and is strictly prohibited, except for three carefully limited exceptions: the state lottery, pari-mutuel betting if conducted in conformity with enabling legislation, and bingo and raffle games that are operated by qualified charitable organizations in the pursuit of charitable purposes.[10] In addition, the Idaho Constitution expressly forbids those engaging in the three carefully limited exceptions from employing any form of casino gambling including, but not limited to, blackjack, craps, roulette, poker, baccarat, keno and slot machines, or from employing any electrical or electromechanical imitation or simulation of any form of casino gambling.

The Idaho Constitution further declares that the legislature shall provide for penalties for violation of the prohibition against gambling. Accordingly, Idaho Code § 18-3801 provides that those who engage in gambling (other than participation in the three exceptions allowed under the Idaho Constitution) shall be guilty of a misdemeanor.

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[10] Once permitted under Idaho law, charitable organizations are now prohibited from conducting casino nights or any form of casino gambling.

Based on the preceding discussion, the court finds that under the combined IGRA and *Cabazon* analysis, the State must negotiate with the Tribes only as to the conduct of a lottery and pari-mutuel betting on horse, mule, and dog races. The State is not required to negotiate as to any other forms of Class III gaming.

6. Restrictions on Conduct of Tribal Gaming.

The State contends that it may negotiate reasonable restrictions and requirements regarding the conduct and operation of tribal gaming in furtherance of the public interest. The Tribes contend that IGRA prohibits the State from imposing restrictions on the scale of operations of allowable games which reduce either the revenue to the Tribes or the potential for economic development. The Tribes refer specifically to "limits on the number of gaming machines and gaming tables as well as limits on the size of prizes and bets." *See* Mem. Supp. Pls.' Mot. for Summ. J., filed June 25, 1993, App. Part II, Ex. F5 (1992 Class III Gaming Compact between the Coeur d'Alene Tribe and the State of Idaho) art. 6, ¶ 6.1.2b.

In light of the court's ruling on the scope of compact negotiations with respect to allowable forms of Class III gaming, this issue appears to be largely moot. Nevertheless, the court notes Section 2710(d)(3)(C) which addresses the subjects that may be raised in the course of compact negotiations.

> (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

> (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;
>
> (iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;
>
> (iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;
>
> (v) remedies for breach of contract;
>
> (vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and
>
> (vii) any other subjects that are directly related to the operation of gaming activities.

25 U.S.C.S. § 2710(d)(3)(C) (Law. Co-op. 1983 & Supp. 1993).

The Senate Report addressed the compact negotiation process in some detail.

> [T]here is no adequate Federal regulatory system in place for class III gaming, nor do tribes have such systems for the regulation of class III gaming currently in place. Thus a logical choice is to make use of existing State regulatory systems, although the adoption of State law is not tantamount to an accession to State jurisdiction. The use of State regulatory systems can be accomplished through negotiated compacts but this is not to say that tribal governments can have no role to play in regulation of class III gaming – many can and will.

> The terms of each compact may vary extensively depending on the type of gaming, the location, the previous relationship of the tribe and State, etc. Section 11(d)(3)(C) describes the issues that may be the subject of negotiations between a tribe and a State in reaching a compact. The Committee recognizes that subparts of each of the broad areas may be more inclusive. *For example, licensing issues under clause vi may include agreements on days and hours of operation, wage and pot limits, types of wagers, and size and capacity of the proposed facility.* A compact may allocate most or all of the jurisdictional responsibility to the tribe, to the State or to any variation in between. The Committee does not intend that compacts be used as a subterfuge for imposing State jurisdiction on tribal lands.
>
> The Committee does view the concession to any implicit tribal agreement to the application of State law for class III gaming as unique and does not consider such agreement to be precedent for any other incursion of State law onto Indian lands. Gaming by its very nature is a unique form of economic enterprise and the Committee is strongly opposed to the application of the jurisdictional elections authorized by this bill to any other economic or regulatory issue that may arise between tribes and States in the future.

See Mem. Supp. Pls.' Mot. for Summ. J., filed June 25, 1993, App. Part I, Ex. A2 (S.Rep. No. 446, 100th Cong., 2d Sess.) at A-13-14 (emphasis added).

The parties have not identified any specific restrictions which the State has attempted to negotiate in compact negotiations. Thus, there is no actual controversy for the court to resolve. Nevertheless, as the statute and Senate Report make clear, Congress intended the parties

to negotiate as to the degree and type of State regulation of, and jurisdiction over, gaming on tribal lands. In so doing, Congress recognized that the Tribes have a strong governmental interest in raising revenues to promote tribal economic development and self-sufficiency. Congress also recognized the important state interest in the safe, orderly, and honest conduct of gaming on the reservations. The court expects the parties to negotiate accordingly, "within the context of the mutual benefits that can flow to and from tribe and States." *Id.* at A-13.

7. Operation of the State Lottery on Tribal Lands.

Since 1989, the State has operated its own lottery on the Nez Perce Reservation and actively encouraged its play. As of April 1993, the state lottery had a total of 32 outlets at various locations in the Nez Perce Reservation. It is unclear from the record whether the state lottery is conducted on the Coeur d'Alene and Kootenai Reservations. The Tribes contend that the State may not conduct its lottery on the Nez Perce Reservation in the absence of a tribal ordinance or resolution and a tribal-state compact which authorizes this activity on the reservation. The State contends that 18 U.S.C. § 1166[11] makes Idaho's lottery laws applicable on Indian reservations.

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[11] "Subject to subsection (c), for purposes of Federal law, all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply in Indian country in the same manner and to the same extent as such laws apply elsewhere in the State." 18 U.S.C.S. § 1166(a) (Law. Co-op 1979 & Supp. 1993).

Congress enacted IGRA in order to provide a framework to guide states and Indian tribes in their efforts to reach agreement both as to the extent of Class III gaming to be conducted on tribal lands and how those activities are to be conducted. The purpose of IGRA, its clear language, and its legislative history make clear that the extent to which state gaming regulations and/or regulatory systems shall apply on Indian reservations is to be carefully negotiated between these sovereign entities through the compact negotiation process.

It is obvious that the state lottery is a Class III gaming activity. IGRA expressly provides that Class III gaming activities shall be *lawful* on Indian lands *only if such activities are* (1) authorized by an ordinance or resolution of the tribe that meets the requirements of the statute and is approved by the commission chairman; (2) located in a state that permits such gaming for any purpose by any person, organization, or entity; and (3) conducted in conformance with a tribal-state compact entered into by the tribe and the state. 25 U.S.C. § 2710(d).

It is undisputed that there is no Nez Perce resolution authorizing Class III gaming on the Nez Perce Reservation, nor is there a compact between the State and the Nez Perce Tribe authorizing such gaming activity. Accordingly, the court finds that in the absence of a tribal gaming ordinance and a compact, neither the Tribe nor any non-tribal entity, including the State of Idaho, may conduct Class III gaming on the reservation.

8. Summary.

Based on the preceding discussion, the court summarizes its findings and conclusions as follows. First, *Cabazon* and IGRA clearly restrict gaming on Indian lands to those types of games permitted by the state and/or those games which do not violate the law and public policy of the state. Second, the present law in Idaho, including the 1992 constitutional amendment, controls this court's analysis of what gaming is permitted by Idaho and what gaming is against the law and the public policy of the State.

Third, the legislative history and cases establish that IGRA allows the State to negotiate with the Tribes with respect to such issues as wage and pot limits, days and hours of operation, and capacity of proposed gaming facilities. Furthermore, it is clear that a focal point of compact negotiations is the question of the extent to which state regulations and/or a state regulatory system regarding particular gaming activities shall apply on Indian reservations. It is hoped that compact negotiations will lead to the mutual advantage of both the Tribes and the State, and that the public interest and safety, as well as the honesty and integrity of the gaming activities, will be protected.

Fourth, IGRA makes it clear to this court that the State cannot operate its lottery on tribal lands without compacts and tribal ordinances authorizing Class III gaming by this non-tribal entity.

As to the fundamental issue, the court holds that the State is only obligated to negotiate a compact with the Tribes regarding Class III games which are permitted

and/or are not prohibited by the laws and public policy of the State. Neither the language of IGRA, the *Cabazon* case on which it is based, the legislative history and statement of purpose of the Act, nor the later federal cases interpreting the Act, can be read to allow the Tribes to conduct casino-type gaming on reservations in Idaho, when the laws and public policy of Idaho are so clearly against such gaming. The State is required to negotiate only as to those Class III gaming activities permitted under state law; a lottery and pari-mutuel betting on horse, mule, and dog races.

The Tribes have expressed their feeling that Idaho seeks to protect its gaming while restricting gaming by the Tribes. This is not the case. The Tribes will be free to conduct the same gaming activities (lottery and pari-mutuel betting) and in the same manner as the State. Furthermore, the Tribes themselves have clearly demonstrated to the Court the substantial revenues that can be generated through a lottery such as that run by the State.

C. Motion to Strike

On July 9, 1993, the State filed a Motion to Strike Affidavit of William Thompson. This motion is made on the grounds that the affidavit of Mr. Thompson sets forth legal conclusions regarding the key questions of law raised in this case. The court has reviewed this motion and the memoranda filed by the parties. The court concurs that the affidavit contains improper legal conclusions. The Tribes concede this point, and in their response memorandum they have identified each legal conclusion. Accordingly, the affidavit will be stricken to the extent that it contains legal conclusions.

III. ORDER

Based on the foregoing, and the court being fully advised in the premises,

IT IS HEREBY ORDERED that the Motion for Summary Judgment, filed June 25, 1993, by the Coeur d'Alene, Nez Perce, and Kootenai Indian Tribes, should be, and is hereby, GRANTED in part, and DENIED in part. The motion is granted in that the State of Idaho may not operate its lottery on the Nez Perce Reservation in the absence of an appropriate tribal-state compact and tribal ordinance. The motion is denied in all other respects.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment, filed June 25, 1993, by the State of Idaho, should be, and is hereby, GRANTED in part, and DENIED in part. The motion is denied in that the State may not operate its lottery on the Nez Perce Reservation in the absence of an appropriate tribal-state compact and tribal ordinance. The motion is granted in all other respects.

IT IS FURTHER ORDERED that, in addition to the summary of the court's findings and conclusions set forth above, the court hereby specifically DECLARES that the State of Idaho is required to negotiate with the plaintiff Tribes only as to those Class III gaming activities permitted under state law: a lottery and pari-mutuel betting on horse, mule, and dog races. Idaho law and public policy clearly prohibit all other forms of Class III gaming, including the casino gambling activities which the Tribes have sought to include in compact negotiations with the State. The Indian Gaming Regulatory Act does not require that all forms of Class III gaming be included in

compact negotiations simply because the State permits a lottery and pari-mutuel betting.

IT IS FURTHER ORDERED that the Motion to Strike Affidavit of William Thompson, filed by the State of Idaho on July 9, 1993, should be, and is hereby, GRANTED in part and DENIED in part. The motion is granted in that all legal conclusions contained in the affidavit are hereby STRICKEN. The motion is otherwise denied.

DATED this 27th day of January, 1994.

/s/ Harold L. Ryan
HAROLD L. RYAN
SENIOR UNITED STATES
DISTRICT JUDGE

U.S. Constitution, Article 1, Sec. 8, Clause 3.

> Congress shall have the power . . . to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

25 U.S.C. § 2701. Congressional findings

The Congress finds that –

(1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;

(2) Federal courts have held that section 81 of this title requires secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;

(3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;

(4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and

(5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy prohibit such gaming activity.

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25 U.S.C. § 2702. Congressional declaration of policy

The purpose of this chapter is –

(1) to provide a statutory basis for the operation of gaming by Indian tribes as a means

of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

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25 U.S.C. § 2703. Definitions

For purposes of this chapter –

(7)(A) The term "class II gaming" means –

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) –

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards,

including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that –

(I) are explicitly authorized by the laws of the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State,

but only is such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(B) The term "class II gaming" does not include –

(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

. . .

(8) The term "class III gaming" means all forms of gaming that are not class I gaming or class II gaming.

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25 U.S.C. § 2710. Tribal gaming ordinances

(b) Regulation of Class II gaming activity; net revenue allocation; audits; contracts

(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if –

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

* * *

(d) Class III gaming activities; authorization; revocation; Tribal-State compact

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are –

(A) authorized by an ordinance or resolution that –

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b) of this section, and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

* * *

Idaho Constitution Article III § 20

ORIGINAL

"§ 20. Gambling not to be authorized. – No game of chance, lottery, gift enterprise or gambling shall be authorized under any pretense or for any purpose whatever, except for the following:

"a. A state lottery which is authorized by the state if conducted in conformity with law; and

"b. Pari-mutuel betting if conducted in conformity with law; and

"c. Charitable games of chance which are operated by qualified charitable organizations in the pursuit of charitable purposes if conducted in conformity with law."

Idaho Constitution Article III § 20

AMENDED

§ 20. Gambling prohibited. – (1) Gambling is contrary to public policy and is strictly prohibited except for the following:

a. A state lottery which is authorized by the state if conducted in conformity with enabling legislation; and

b. Pari-mutuel betting if conducted in conformity with enabling legislation; and

c. Bingo and raffle games that are operated by qualified charitable organizations in the pursuit of charitable purposes if conducted in conformity with enabling legislation.

(2) No activities permitted by subsection (1) shall employ any form of casino gambling including, but not limited to, blackjack, craps, roulette, poker, bacarrat [baccarat], keno and slot machines, or employ any electronic or electromechanical imitation or simulation of any form of casino gambling.

(3) The legislature shall provide by law penalties for violations of this section.

(4) Notwithstanding the foregoing, the following are not gambling and are not prohibited by this section:

a. Merchant promotional contests and drawings conducted incidentally to bona fide nongaming business operations, if prizes are awarded without consideration being charged to participants; and

b. Games that award only additional play.

ORIGINAL

Idaho Code 18-3801. Gambling. – Every person who deals, plays or carries on, opens or causes to be opened, or who conducts, either as owner, employee, or lessee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noir, rondo, Indian stick game, or any game played with cards, dice or any other device for money, checks, credit or any other representative of values, is guilty of a misdemeanor and is punishable by fine not less than $200 nor more than $1,000 or imprisonment in the county jail not less than two (2) months nor more than twelve (12) months or both such fine and imprisonment.

AMENDED

Idaho Code 18-3801. Gambling defined. – "Gambling" means risking any money, credit, deposit or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device or the happening or outcome of an event, including a sporting event, the operation of casino gambling including, but not limited to, blackjack, craps, roulette, poker, bacarrat [baccarat] or keno, but does not include:

(1) Bona fide contests of skill, speed, strength or endurance in which awards are made only to entrants or the owners of entrants; or

(2) Bona fide business transactions which are valid under the law of contracts; or

(3) Games that award only additional play; or

(4) Merchant promotional contests and drawings conducted incidentally to bona fide nongaming business operations, if prizes are awarded without consideration being charged to participants; or

(5) Other acts or transactions now or hereafter expressly authorized by law.

AMENDED

Idaho Code 18-3802. Gambling prohibited. – (1) A person is guilty of gambling if he:

(a) Participates in gambling; or

(b) Knowlingly [sic] permits any gambling to be played, conducted or dealt upon or in any real or personal property owned, rented, or under the control of the actor, whether in whole or in part.

(2) Gambling is a misdemeanor.

* * *

Idaho Code 18-3809. Book making and pool selling. – Any person who for gain, hire or profit engages in pool selling or book making at any time or place within this state; or any person who keeps or occupies any room, shed, tenement, tent, booth or building, float or vessel, or

any part thereof, or who occupies any place or stand of any kind, upon any public or private grounds within this state, with books, papers, paraphernalia, or mechanical device, for the purpose of engaging in pool selling or book making, or recording or registering bets or wagers; or who sells pools or makes books upon the result of any trial or contest of skill, speed or power of endurance of man or beast for gain, hire or reward; or any person who, for gain, hire or reward, receives, registers, records and forwards to any other place, within or without this state, any money, consideration or thing of value for the purpose of having it there bet or wagered by or for any person, who at such place sells pools or makes books upon any such event, or any person who, being the owner, lessee or occupant of any such room, shed, tenement, tent, booth or building, float or vessel, or part thereof, or any grounds within this state, knowingly and wilfully permits the same to be occupied and used for any of the purposes aforesaid; unless unable to legally prevent the same; or any person who aids, assists or abets in any manner in any of said acts which are hereby forbidden, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $300 or by imprisonment in the county jail for a period of not more than six (6) months or by both such fine and imprisonment.

Idaho Code 18-3810. Slot machines – Possession unlawful – Exception. – (1) Except as otherwise provided in this section, it shall be a misdemeanor and punishable as provided in section 18-3801, Idaho Code, for any person

to use, possess, operate, keep, sell, or maintain for use or operation or otherwise, anywhere within the state of Idaho, any slot machine of any sort or kind whatsoever.

(2) The provisions of section 18-3804, Idaho Code, shall not apply to antique slot machines. For the purpose of this section, an antique slot machine is a slot machine manufactured prior to 1950, the operation of which is exclusively mechanical in nature and is not aided in whole or in part by any electronic means.

(3) Antique slot machines may be sold, possessed or located for purposes of display only and not for operation.

(4) An antique slot machine may not be operated for any purpose.

* * *

Idaho Code 18-4901. Lottery defined. – A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property, or a portion of it, or for any share or interest in such property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known. The pari-mutuel system used in racing shall not constitute a lottery, so long as it is conducted in conformity with the provisions of chapter 25, title 54, Idaho Code.

Idaho Code 18-4902. Engaging in lottery. – Every person who contrives, prepares, sets up, proposes, or draws any lottery is guilty of a misdemeanor.

* * *

Idaho Code 54-2502. Definitions. – Unless the context otherwise requires, words and phrases as used herein shall mean: . . .

* * *

"Race meet" shall mean and include any exhibition of thoroughbred, purebred, and/or registered horse racing, mule racing or dog racing, where the pari-mutuel system of wagering is used. Singular shall include the plural and plural shall include the singular; and words importing one gender shall be regarded as including all other genders.

Idaho Code 54-2512. Pari-mutuel betting – Other betting illegal. – (1) Any licensee conducting a race meet under this act may provide a place or places in the race meet grounds or enclosure at which such licensee may conduct and supervise the use of the pari-mutuel system by patrons on the results of the races conducted by such licensee at such race meet and, upon written application by a licensee and approval by the commission, on the result of simulcast and/or televised races.

(2) Licenses authorizing simulcast and/or televised races will be regulated by the commission, in addition to their other responsibilities, for the purpose of enhancing, promoting, and protecting the live race industry in the state of Idaho. No license authorizing simulcasting and/or televised races shall be issued where live race meets have not been conducted annually at the facility named in the application during the preceding two (2) years and, with the exception of pari-mutuel greyhound racing, no license authorizing simulcasting and/or televised races shall be granted if such live race meet facility does not run at least ninety percent (90%) of the number of live races that were conducted in 1989.

(3)(a) The commission shall not grant a license that allows a simulcast and/or televised broadcast to occur within seventy-five (75) miles of a licensed live race meet at another facility within the state, without written permission from each facility involved.

(b) In addition to the restrictions recited in paragraph (a) of this subsection, in counties whose population exceeds on hundred fifty thousand (150,000), the commission shall not grant a license that allows a simulcast and/or televised broadcast to occur within the fourteen (14) days prior to a licensed live race meet at another facility within the state, without written permission from each facility involved.

(4) To further protect the live race industry, a petition, signed by not less than seventy-five (75) bona fide owners, breeders and/or trainers may be submitted to the commission which will require a public hearing to be

held regarding the reissuance of a license authorizing simulcasting and/or television broadcasting of races.

Such pari-mutuel system conducted at such race meet shall not under any circumstances, if conducted under the provisions of this act and in conformity thereto and to the rules and regulations of the commission, to be held or construed to be unlawful, other statutes of this state to the contrary notwithstanding.

(5) The participation by a licensee in an interstate combined wagering pool does not cause that licensee to be considered to be doing business in any jurisdiction other than the jurisdiction in which the licensee is physically located.

(6) Pari-mutuel taxes or commissions may not be imposed on any amounts wagered in an interstate combined wagering pool other than amounts wagered within this jurisdiction.

(7) It shall be unlawful to conduct pool selling, book making, or to circulate hand books, or to bet or wager on a race of any licensed race meet, other than by the pari-mutuel system; and it shall further be unlawful knowingly to permit any minor to use the pari-mutuel system.

* * *

Idaho Code 67-7401. Purpose. – The purpose of this legislation is to establish a state lottery to generate revenue for the state with a director and a state lottery commission to oversee lottery operations. This chapter establishes a state lottery account for the deposit of receipts, for payment of prizes and expenses, and provides that revenues generated in the lottery account, after allowances for prizes and expenses, shall be distributed for the public benefit. This chapter provides for contracting with lottery retailers and authorizes the promulgation of administrative rules and regulations necessary for carrying out the intent of this chapter. The lottery commission and the director of the lottery shall be responsible for operating the lottery at the least public expense and the smallest staffing possible, commensurate with all other policies stated in this chapter. Additionally, all advertising by the lottery shall be conducted in a manner consonant with the dignity of the state and the sensibilities of its citizens. [I.C. § 67-7401, as added by 1988, ch. 232, § 2, p. 446.]

Idaho Code 67-7404. Definitions. – As used in this chapter: . . .

* * *

(14) "Share" means any intangible evidence of participation in a game conducted by the state lottery.

(15) "Ticket" means any tangible evidence issued by the lottery to provide participation in a game conducted by the state lottery.

* * *

Idaho Code 67-7447. Lawful activity. – Chapters 38 and 49, Title 18, Idaho Code, or any other state or local law or regulation providing any penalty, disability, restriction, regulation or prohibition for the manufacture, transportation, storage, distribution, advertising, possession, or sale of any lottery tickets or shares or for the operation of any lottery game shall not apply to the tickets or shares of the state lottery established in this chapter.

* * *

C.R. 49(5)

Affidavit of
Earnest Stensgar

[page 1]

1992 CLASS III GAMING COMPACT

By and Between the

COEUR D'ALENE TRIBE

and the

STATE OF IDAHO

This Tribal-State Compact is made and entered into by and between the Coeur d'Alene Tribe ("Tribe"), a federally recognized Indian Tribe, and the State of Idaho ("State") pursuant to the provisions of the Indian Gaming Regulatory Act. Pub. L. 100-497, 102 Stat. 2425, codified at 25 U.S.C. § 2701 *et seq.* and 18 U.S.C. §§ 1166-1168 (the "Act"). Whereby, the parties herein do promise, covenant and agree as follows:

[page 5]

4.15 "Pari-mutuel" means a system of wagering on a race or sporting event whereby the winners divide the total amount wagered, in proportion to the amount individually wagered, after deducting commissions, fees and taxes.

* * *

[page 6]

4.18 "State gaming agency" means the Idaho agency designated by the Governor by written notice to the Tribe as the single state agency primarily responsible

[page 6]

for oversight of Class III gaming as authorized by this Compact.

4.19 "State lottery" means;

.1 The scratch-off game in which a player purchases a paper ticket that has groupings of numbers or symbols that are covered with a material that can be scratched off, thereby exposing the numbers or symbols. The player wins a prize if his ticket contains a pre-set combination of numbers or symbols; and

.2 The numbers game commonly known as lotto in which a player purchases a paper ticket containing a series of numbers (often 5, 6 or 7 numbers) and wins a prize if all or some of these numbers are selected at a random drawing; and

.3 The pull-tab game in which a player purchases a paper product that, when pulled apart, reveals a grouping of numbers or symbols. A player wins a prize if his ticket contains a pre-set combination of numbers or symbols; and

.4 Any other type of game that the State hereafter conducts as a lottery game.

* * *

[page 7]

ARTICLE 6. AUTHORIZED CLASS III GAMING

6.1 **Disputed Issues.** The parties have been unable to agree upon the types of Class III games permitted by

the act to be played by the Tribe and whether restrictions on the scale of operations are allowed under the Act.

.1 The State takes the following positions:

a) Types of Games. Under the applicable laws of the State before and after passage of HJR 4 (1992), the Act permits only state lottery, pari-mutuel betting on racing, and the simulcast thereof as authorized Class III games in Idaho.

b) Restrictions. The Act permits the State to negotiate reasonable restrictions and requirements for the conduct and operation of gaming in furtherance of the public interest, including negotiated limits upon the scale of operations of other Class III games, should they be allowed.

.2 The Tribe takes the following positions:

a) Types of Games. Under either Section 20, Article III, of the Idaho Constitution and the applicable Laws of the State or the amendment to Section 20, Article III, of the Idaho State Constitution by HJR 4, 51st Idaho Leg. Special Session (1992), the Act permits the Tribe to engage in all games that contain the elements of chance and or skill, prize and consideration.

b) Restrictions. The Act prohibits a state from imposing restrictions on the scale of operation of allowable games which reduce either the revenue to the Tribe, or

the potential for Tribal economic development. Scale of operation restrictions include state-imposed limits on the number of gaming machines and gaming tables as well as limits on the size of prizes and bets.

.3 Both the Tribe and the State acknowledge that these legal issues should be resolved and concluded. In recognition of this, the Tribe and the State agree in this Compact to resolve issues that can be agreed upon and agree to establish a process for resolving the disputed matters.

* * *

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6.2 **Gaming Authorized.** Following approval of this Compact as provided in the Act, the Tribe may operate in its gaming facilities located on Indian lands the following types of games.

.1 Lottery: those lottery games defined as "State lottery" in Article 4.19.

.2 Pari-mutuel betting:

a) on the racing of horses;

b) on the racing of dogs;

c) on the racing of mules; and

d) on the simulcast of a, b, or c.

.3 Any additional type of game involving chance and/or skill, prize and consideration that may hereafter be authorized to be conducted in the State.

6.3 **No Restrictions on Authorized Gaming.** Except as otherwise provided in this Compact, gaming authorized in Article 6.2.1 and 6.2.2 shall not be subject to any State restrictions, including the Tribe's advertising or promotion of the authorized games or any intrastate or interstate aspects of the permitted games. Provided, this section is not intended to permit gaming except on Indian lands as defined in Article 4.9.

* * *

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6.4 **Judicial Remedy.** The Tribe and the State agree that the ultimate issues of what gaming the Tribe may conduct under the Act and what restrictions on the operations, if any, may be imposed, are ultimately questions of law.

.1 It is the Tribe's position that the Act has vested exclusive jurisdiction in the United States District Courts to resolve disputes under the Act.

.2 The State does not consent to jurisdiction of the federal court over any claim under the Act. However, the Tribe and the State agree that, in lieu of a "bad faith" claim under the Act, either party may file suit for declaratory judgment in the United States District Court for the District of Idaho naming the other as a defendant and seeking a declaration of the legal issues disputed in this Article 6. Both parties agree to seek the necessary legal authority, merge declaratory judgment actions, or take other steps as may be necessary to participate in such an action on its merits. This agreement shall not in

any way prejudice any right to appeal or seek review of any judgment.

.3 The parties agree to expedite any appeal or review of any final order or judgment entered in such declaratory judgment action.

[page 11]

6.5 **Post Declaratory Judgment.** Upon the conclusion of all legal proceedings in a declaratory judgment action brought pursuant to Article 6.4, including the conclusion of all appeals or review, the appropriate provisions below shall apply:

.1 In the event the court(s) determines that no additional types of games are permitted in Idaho under the Act, the Tribe's gaming shall be limited to the gaming authorized in Article 6.2.

.2 In the event the court(s) determines that additional types of games are permitted in Idaho under the Act, the Tribe may conduct such games as are consistent with that judgment upon conclusion of negotiations and/or arbitration as provided for in Article 6.6.1.

* * *

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Calendar No. 862

100TH CONGRESS
2d Session

SENATE

REPORT
100-446

INDIAN GAMING REGULATORY ACT

AUGUST 3 (legislative day, AUGUST 1).
1988. – Ordered to be printed

MR. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 555]

S. 555 is intended to expressly preempt the field in the governance of gaming activities on Indian lands. Consequently, Federal courts should not balance competing Federal, State, and tribal interests to determine the extent to which various gaming activities are allowed.

Finally, the Committee anticipates that Federal courts will rely on the distinction between State criminal laws which prohibit certain activities and the civil laws of a State which impose a regulatory scheme upon those activities to determine whether class II games are allowed in certain States. This distinction has been discussed by the Federal courts many times, most recently and notably by the Supreme Court in *Cabazon*. Under Public Law S3-280, the prohibitory/regulatory distinction is used to

determine the extent to which State laws apply through the assertion of State court jurisdiction on Indian lands in Public Law 280 States. The Committee wishes to make clear that, under S. 555, application of the prohibitory/regulatory distinction is markedly different from the application of the distinction in the context of Public Law 83-280. Here, the courts will consider the distinction between a State's civil and criminal laws to determine whether a body of law is applicable, as a matter of Federal law, to either allow or prohibit certain activities. The Committee does not intend for S. 555 to be used in any way to subject Indian tribes or their members who engage in class II games to the criminal jurisdiction of States in which criminal laws prohibit class II games.

* * *

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Class II gaming is defined in section 4(8)(A)(B)(C) and (D) Consistent with tribal rights that were recognized and affirmed in the *Cabazon* decision, the Committee intends in section 4(8)(A)(i) that tribes have maximum flexibility to utilize games such as bingo and lotto for tribal economic development. The Committee specifically rejects any inference that tribes should restrict class II games to existing games sizes, levels of participation, or current technology. The Committee intends that tribes be given the opportunity to take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility. In this regard, the Committee recognizes that tribes may wish to join with other tribes to coordinate their class II

operations and thereby enhance the potential of increasing revenues. For example, linking participant players at various reservations whether in the same or different States, by means of telephone, cable, television or satellite may be a reasonable approach for tribes to take. Simultaneous games participation between and among reservations can be made practical by use of computers and telecommunications technology as long as the use of such technology does not change the fundamental characteristics of the bingo or lotto games and as long as such games are otherwise operated in accordance with applicable Federal communications law. In other words, such technology would merely broaden the potential participation levels and is readily distinguishable from the use of electronic facsimiles in which a single participant plays a game with or against a machine rather than with or against other players.

* * *

[page A-11-12]

Class II. – Section 11(a)(2) stipulates that class II gaming remains within tribal jurisdiction but is subject to the provisions of the act where two conditions are met: The State within which the tribe is located must permit such gaming for any purpose by any entity; and such gaming is not otherwise prohibited by Federal law. The Committee recognizes that tribal jurisdiction over class II gaming has not been previously addressed by Federal statute and thus there has heretofore been no divestment or transfer of such inherent tribal governmental powers by the Congress.

There are five States (Arkansas, Hawaii, Indiana, Mississippi, and Utah) that criminally prohibit any type of gaming, including bingo. S. 555 bars any tribe within those States, as a matter of Federal law, from operating bingo or any other type of gaming. In the other 45 States, some forms of bingo are permitted and tribes with Indian lands in those States are free to operate bingo on Indian lands, subject to the regulatory scheme set forth in the bill. The card games regulated as class II gaming are permitted by far fewer States and are subject to requirements set forth in section 4(8). The phrase "for any purpose by any person, organization or entity" makes no distinction between State laws that allow class II gaming for charitable, commercial, or governmental purposes, or the nature of the entity conducting the gaming. If such gaming is not criminally prohibited by the State in which tribes are located, then tribes, as governments, are free to engage in such gaming.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RUMSEY INDIAN RANCHERIA OF WINTUN INDIANS; TABLE MOUNTAIN RANCHERIA; CHER-AE HEIGHTS INDIAN COMMUNITY OF THE TRINIDAD RANCHERIA; SAN MANUAL BAND OF MISSION INDIANS, VIEJAS RESERVATION OF THE CAPITAN GRAND BAND OF DIEGUENO MISSION INDIANS AND HOPLAND BANK OF POMO INDIANS; BARONA BAND OF MISSION INDIANS; SYCUAN BANK OF MISSION INDIANS; AGUA CALIENTE BAND OF CAHUILLA INDIANS, *Plaintiffs-Appellees,* v. PETE WILSON, Governor; STATE OF CALIFORNIA, *Defendants-Appellants.*	No. 93-16609 D.C. No. CV-92-00812-GEB ORDER, DISSENT, CONCURRENCE, AND AMENDED OPINION

RUMSEY INDIAN RANCHERIA OF WINTUN INDIANS; TABLE MOUNTAIN RANCHERIA; CHER-AE HEIGHTS INDIAN COMMUNITY OF THE TRINIDAD RANCHERIA; SAN MANUAL BAND OF MISSION INDIANS, VIEJAS RESERVATION OF THE CAPTAIN

GRANDE BAND OF DIEGUENO MISSION INDIANS AND HOPLAND BAND OF POMO INDIANS; WINTUN INDIANS; SAN MANUAL BAND OF MISSION INDIANS; CABAZON BAND OF MISSION INDIANS; THE SANTA YNEZ BAND OF CHUMASH MISSION INDIANS OF THE SANTA YSABEL RESERVATION, CALIFORNIA; VIEJAS RESERVATION OF THE CAPITAN GRANDE BAND OF DIEGUENO MISSION INDIANS; SAN MANUAL BAND OF MISSION INDIANS; THE HOPLAND BAND OF POMO INDIANS; THE SYCUAN BAND OF MISSION INDIANS; THE MORONGO BAND OF MISSION INDIANS; THE SANTA ROSA BAND OF TACHE INDIANS; THE CACHIL DEHE BAND OF WINTUN INDIANS OF THE COLUSA INDIAN COMMUNITY; THE SOBOBA BAND OF CAHUILLA MISSION INDIANS; THE ROBINSON BAND OF POMO INDIANS; THE AGUA CALIENTE BAND OF CAHUILLA INDIANS; and THE BARONA GROUP OF THE CAPITAN GRANDE BAND OF MISSION INDIANS,

Plaintiffs-Appellees-Cross-Appellants,

v.

PETE WILSON, Governor; STATE OF CALIFORNIA,

Defendants-Appellants-Cross-Appellees.

No. 93-16745

D.C. No. CV-92-00972-GEB

Appeals from the United States District Court
for the Eastern District of California
Garland E. Burrell, District Judge, Presiding

Argued and Submitted
May 10, 1994 – San Francisco, California

Filed November 15, 1994
Amended August 11, 1995

Before: J. Clifford Wallace, Chief Judge;
Diarmuid F. O'Scannlain, Circuit Judge;
Robert J. Kelleher,* District Judge.

Opinion by Judge O'Scannlain;
Concurrence by Chief Judge Wallace;
Dissent to Order by Judge Canby;
Concurrence to Dissent by Judges Ferguson and Norris

* * *

The panel has voted to deny the petitions for rehearing. Chief Judge Wallace and Judge O'Scannlain have voted to reject the suggestions for rehearing en banc, and Judge Kelleher has so recommended.

The full court was advised of the suggestions for rehearing en banc. An active judge requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 35.

The petitions for rehearing are DENIED and the suggestions for rehearing en banc are REJECTED.

---

* The Honorable Robert J. Kelleher, Senior United States District Judge for the Central District of California, sitting by designation.

CANBY, Circuit Judge, joined by PREGERSON, REINHARDT, and HAWKINS, Circuit Judges, dissenting from the denial of rehearing en banc:

This is a case of major significance in the administration of the Indian Gaming Regulatory Act ("IGRA") and it has been decided incorrectly, in a manner that conflicts with the Second Circuit's interpretation of the same statutory language. The result is to frustrate the scheme of state-tribal negotiation that Congress established in IGRA. We should have granted rehearing en banc to prevent the near-nullification of IGRA in a circuit that encompasses a great portion of the nation's Indian country. Our failure to do so may close the only route open to many tribes to escape a century of poverty.

Ramsey holds that California, which permits several varieties of Class III gambling, has no duty under IGRA to negotiate with the tribes over the tribes' ability to conduct any game that is illegal under California law. This ruling effectively frustrates IGRA's entire plan governing Class III Indian gaming. The primary purpose of IGRA, as set forth in the Act, is "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1). IGRA's otherwise drastic extension of state gaming law to Indian country (to be enforced only by the federal government) was modified by IGRA's process by which the states and tribes could arrive at compacts specifying what games might be allowed and who might have jurisdiction to enforce gaming laws. *See* 25 U.S.A. §§ 2710(3); 18 U.S.C. § 1166(c)(2) (exempting Class III gaming conducted pursuant to a tribal-state compact

from the application of state gaming laws extended into Indian country by § 1166(a)). The whole idea was to foster these compacts. That goal is defeated if the details of the state's regulatory schemes, allowing some games and prohibiting others, apply if the state does nothing. Thus the Second Circuit, in arriving at a conclusion precisely opposite to that of *Rumsey*, stated:

> Under the State's approach, . . . even where a state does not prohibit class III gaming as a matter of criminal law and public policy, an Indian tribe could nonetheless conduct such gaming only in accord with, and by acceptance of, the entire state corpus of laws and regulations governing such gaming. The compact process that Congress established as the centerpiece of the IGRA's regulation of class III gaming would thus become a dead letter; there would be nothing to negotiate, and no meaningful compact would be possible.

Mashantucket Pequot Tribe v. Connecticut, 913 F.2d 1024, 1030-31 (2d Cir. 1990).[1]

The Second Circuit's fears of turning IGRA's compact process into a dead letter are well-founded. It is well to keep in mind that the issue here is not whether California must allow every game the tribes want to conduct; it is merely whether California has a duty to negotiate with the tribes to determine what games should be conducted,

---

[1] We recognize that *Rumsey's* approach is supported by the Eighth Circuit, *Cheyenne River Sioux Tribe v. South Dakota*, 3 F.3d 273 (8th Cir. 1993), but for the reasons stated we believe that the Second Circuit has much the better overview of IGRA.

on what scale, and who has jurisdiction to enforce gaming laws. In passing IGRA, Congress knew that states and tribes both had important interests at stake. If a state has a genuine prohibitory public policy against all Class III gaming, as some states do, it can rest on that policy and not entertain the possibility of Indian Class III gaming within its borders. States like California that have no such wholesale public policy against Class III gaming must, under IGRA, reach an accommodation between their interests and the strong interests of the tribes in conducting such gaming, IGRA's method of reaching such an accommodation is by negotiation between the two affected groups. IGRA imposes on the states a duty to negotiate compacts in good faith. That duty is enforceable in federal court with the aid, if necessary, of a court appointed mediator to arrive at a compact and the Secretary of the Interior to dictate a compact if the parties do not accept the mediator's ruling. 25 U.S.C. § 2710(d)(7). But under *Rumsey,* this whole process is nipped in the bud if the tribe seeks to operate games that state law, criminal *or* regulatory, happens to prohibit. The state has no duty to begin negotiations, even though under IGRA a compact may permit the tribe to operate games that state law otherwise prohibits. 18 U.S.C. § 1166(c)(2). The State thus has no incentive to negotiate, and there is no system to require negotiation. IGRA is rendered toothless.

Such a nullifying interpretation of IGRA might be understandable if it were required by the plain words of the statute, but it is not. *Rumsey* defeats the congressional plan for Class III gaming by a manifestly flawed interpretation of the statutory language. In deciding that California had no duty to negotiate with the plaintiff tribes,

the *Rumsey* opinion asked and answered the wrong question. IGRA provides:

> *Class III gaming* activities shall be lawful on Indian lands only if such activities are –
>
> . . . .
>
> (B) located in a State that *permits such gaming* for any purpose by any person, organization, or entity. . . .

25 U.S.C. § 2710(d)(1)(B) (emphasis added). Thus the state must negotiate with a tribe if the state "permits such gaming." The *Rumsey* opinion regards the key question as being whether the word "permits" is ambiguous; it holds that the word is not ambiguous, so the State need not bargain. But the proper question is not what Congress meant by "permits," but what Congress meant by "such gaming." Did it mean the particular game or games in issue, or did it mean the entire category of Class III gaming? The structure of IGRA makes clear that Congress was dealing categorically, and that a state's duty to bargain is not to be determined game-by-game. The time to argue over particular games is during the negotiation process.

The only natural reading of section 2710(d)(1)(B) is that, when Congress says "Class III gaming activities shall be lawful . . . if located in a State that permits such gaming," then "such gaming" refers back to the category of "Class III gaming," which is the next prior use of the word "gaming." *Rumsey* interprets the statutory language as if it said: "A Class III game shall be lawful . . . if located in a State that permits that game." But that is not what Congress said, and it is not a natural reading of the

statutory language. The plain language cuts directly against *Rumsey;* Congress allows a tribe to conduct Class III gaming activities (pursuant to a compact) if the State allows Class III gaming by anyone.

Furthermore, Class II gaming is governed by virtually identical language in section 2710(b)(1)(A). A tribe may conduct and regulate *"Class II gaming . . .* if such Indian gaming is located within a State that *permits such gaming* for any purpose by any person, oroganization or entity. . . . " 25 U.S.C. § 2710(b)(1)(A) (emphasis added). We have held that the state cannot allow or disallow Class II Indian gaming game-by-game. *Sycuan Band of Mission Indians v. Miller,* 54 F.3d 535 (9th Cir. 1995) (amended opinion). Our decision in *Sycuan Band* followed the reasoning of the Supreme Court in *California v. Cabazon Band of Mission Indians,* 480 U.S. 202 (1987), the seminal Indian gaming case that ultimately led to the passage of IGRA. In deciding for purposes of Public Law 280 whether California's prohibition of high-stakes bingo could be enforced against the Band, the Supreme Court noted that "[t]he shorthand test is whether the conduct at issue violates the State's public policy." After reviewing California's treatment of gambling, the Court stated:

> In light of the fact that California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery, we must conclude that California regulates rather than prohibits *gambling in general* and bingo in particular.

Id. at 211 (emphasis added). Thus, *Cabazon Band* ascertained California's public policy at a level of generality

far above that of the individual game in issue, and concluded that the Band could conduct high-stakes bingo even though California made that activity a misdemeanor. We applied a similarly broad and categorical approach to Class II gaming in *Sycuan Band*.

The *Rumsey* opinion refuses to apply the reasoning of *Cabazon Band* and *Cycuan Band*, and instead holds that a class-wide, categorical approach is precluded by the "unambiguous" plain words of section 2710(d)(1)(B), even though identical words in section 2710(b)(1)(A) require a contrary result for Class II gaming. The majority in *Rumsey* justifies its interpretation by referring to the Senate Committee Report on IGRA, which approves the approach of *Cabazon Band* for Class II gaming but says nothing about *Cabazon Band's* applicability to Class III gaming. *See* Sen. Rep. No. 100-446, 1988 U.S.C.C.A.N. 3071, 3076. But we should not read a congressional negative into a committee report's failure to mention *Cabazon Band* in regard to Class III gaming. *Cabazon Band* dealt with games that IGRA placed in Class II, and that is explanation enough why the discussion of *Cabazon Band* in the Committee's report arose only in connection with Class II gaming. The fact remains that Congress wrote provisions of essentially identical wording and structure to govern both Class II and Class III gaming. We should give them both the same categorical meaning.

Rumsey has thus misconstrued IGRA's Class III gaming provisions, and has done so in a manner that defeats Congress's intention and causes great economic harm to numerous tribes. With all respect to the *Rumsey* panel, we dissent from the denial of rehearing en banc.

FERGUSON and NORRIS, Senior Circuit Judges:

We agree with the views expressed by Judge Canby.

* * *

Supreme Court, U.S.
FILED
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No. 95-275

In The

Supreme Court of the United States

October Term, 1995

COEUR d'ALENE TRIBE,

Petitioner,

v.

STATE OF IDAHO,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Should certiorari be granted when the district court applied properly the same legal standard that Petitioner seeks now to have this Court announce on appeal?

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No. 95-275

In The

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October Term, 1995

COEUR d'ALENE TRIBE,

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Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

Pursuant to Sup. Ct. Rule 15, Respondent files this brief in opposition to the petition for a writ of certiorari.

ADDITIONAL STATUTES INVOLVED

15 U.S.C. § 1171. The pertinent text to this statute is set forth in Respondent's appendix.

STATEMENT OF THE CASE

The question resolved below was whether the Coeur d'Alene Indian Tribe may conduct casino gambling on its reservation when casino gambling is prohibited in the State of Idaho.

Article III, § 20 of the Idaho Constitution expressly declares that all gambling is contrary to the public policy of the state and is strictly prohibited, except for three specific, narrow exceptions: the state lottery, pari-mutuel betting if conducted in conformity with enabling legislation, and charitable bingo and raffle games that are operated by qualified charitable organizations in the pursuit of charitable purposes:

> GAMBLING PROHIBITED. (1) Gambling is contrary to public policy and is strictly prohibited except for the following:
>
> a. A state lottery which is authorized by the state if conducted in conformity with enabling legislation; and
>
> b. Pari-mutuel betting if conducted in conformity with enabling legislation; and
>
> c. Bingo and raffle games that are operated by qualified charitable organizations in the pursuit of charitable purposes if conducted in conformity with enabling legislation.

Idaho Const. art. III, § 20.

Contrary to assertions in Petitioner's brief, the Idaho Constitution also expressly forbids those engaging in the three carefully limited exceptions from employing any form of casino gambling, including, but not limited to, blackjack, craps, roulette, poker, baccarat, keno and slot

machines or from employing any electrical or electromechanical imitation or simulation of any form of casino gambling. In this regard, art. III, sec. 20 of the Idaho Constitution provides:

> (2) No activities permitted by subsection (1) shall employ any form of casino gambling including, but not limited to, blackjack, craps, roulette, poker, bacarrat [baccarat], keno and slot machines, or employ any electronic or electromechanical imitation or simulation of any form of casino gambling.

In Idaho, even charitable organizations are prohibited from conducting "casino nights" or any other form of casino gambling. They can only conduct bingo and raffles.[1]

Art. III, sec. 20 of the Idaho Constitution goes on to mandate the legislature to provide penalties for violations of the prohibition against gambling. Accordingly, Idaho Code § 18-3801 provides that those who engage in gambling (other than participation in the three specific,

---

[1] Petitioner makes the novel argument that because the Idaho Constitution provides that gambling does not include "games that award only additional play," casino games that do award money or property should also be construed to be consistent with the public policy and criminal laws of the state. Petitioner's brief at 26. We note that federal law also recognizes the same distinction as the Idaho Constitution. The Johnson Act also defines "gambling device" to include various devices only if one can receive "money or property" from their operation. 15 U.S.C. § 1171. In *U.S. v. 294 Various Gambling Devices*, 718 F. Supp. 1236, 1248 (W.D. Penn. 1989), the district court pointed out that games that award only "free games" are not gambling devices under the Johnson Act.

narrow exceptions allowed under the Idaho Constitution) shall be guilty of a misdemeanor.

On April 15, 1992, Petitioner Coeur d'Alene Tribe, pursuant to the Indian Gaming Regulatory Act ("IGRA"), asked Respondent State of Idaho to enter into negotiations for a tribal-state compact governing Class III gaming activities on the Coeur d'Alene Reservation. As noted in the district court's opinion at pp. 16-19 of the appendix to Petitioner's brief, IGRA governs gaming on tribal reservations. It divides gaming into three classes. Class I gaming encompasses traditional forms of Indian gaming used in connection with tribal ceremonies. Class I gaming is under the exclusive jurisdiction of the tribes. 25 U.S.C. § 2710(a)(1). Class II gaming, such as bingo and pull-tabs, are subject to the requirements of IGRA and to the oversight of the National Indian Gaming Commission. 25 U.S.C. § 2710(b). Class III gaming activities, the gaming activities at issue here, include all traditional forms of casino gambling, or the electronic or electromechanical equivalent thereof. Class III gaming activities can only be conducted if the games are authorized by tribal ordinance, the tribe is located in a state that permits such gaming activities and the gaming is conducted in conformance with a tribal-state compact entered into between the tribe and the state. 25 U.S.C. § 2710(d)(1). IGRA's approach to Class III gaming is essentially to respect state public policy and criminal laws which prohibit particular gaming activities.

After the opening of negotiations in the summer of 1992, the Governor of Idaho called a special session of the Idaho Legislature which drafted a proposed amendment to art. III, § 20 of the Idaho Constitution to clarify Idaho's

prohibitory stance against gambling in general and casino gambling in particular. Casino gambling has never been permitted in Idaho, and there has never been a legally authorized casino in this state. The proposed amendment clarifying Idaho's strict prohibition against this kind of gambling passed overwhelmingly in the November 1992 election. Following a challenge by the Nez Perce Tribe, the amendment was upheld by the Idaho Supreme Court as having been properly presented for voter approval. *Nez Perce Tribe v. Cenarrusa*, 867 P.2d 911 (Idaho 1993).

The state and tribe entered into a compact authorizing the tribe to conduct the types of Class III gaming activities not prohibited by the Idaho Constitution and criminal laws of the state. Petitioner's brief, App. at 66-67. The parties also agreed to a declaratory judgment action to determine if the tribe could conduct games not permitted by state laws. Petitioner's brief, App. at 64-66. Petitioner had expressed its intent to engage in extensive Class III gaming activities, including casino-style gambling, that are prohibited under Idaho law and public policy. Respondent's position was that because these activities were strictly prohibited in Idaho, Respondent was not required, under IGRA's terms, to negotiate these gaming activities in the compacting process.

Petitioner filed its declaratory judgment action in federal district court. Petitioner's argument was two-fold. First, Petitioner contended that the amended state constitution and current Idaho law should not apply to Petitioner's negotiations with Respondent. Rather, Respondent should be bound by the law as it existed prior to November 1992, when the electorate ratified the constitutional amendment. Second, Petitioner asserted

that, under IGRA's provisions concerning Class III gaming, if Respondent State of Idaho allowed any form of Class III gaming at all in the state, Petitioner must then be allowed to engage in all Class III gaming.

The district court rejected Petitioner's arguments. The court first held that IGRA did not prohibit Idaho from amending its constitution or changing its laws. Nor, according to the district court, did Petitioner have a vested right in the law as it existed prior to the 1992 election. "The Tribes offer no authority to support their claim that IGRA precludes a state from changing its gaming laws prior to entering into a compact." Petitioner's brief, App. at 23. Consequently, the relevant state law was Idaho's current constitutional and statutory provisions. Worth noting is that Idaho did not allow casino gambling before the 1992 amendment, either.

The district court then applied the *Cabazon* criminal/prohibitory and civil/regulatory analysis to the facts before it to determine whether casino gambling was required under IGRA to be included within the compact negotiation process. The so-called *Cabazon* standard was first set forth by this Court in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). While *Cabazon* was a Public Law 280 case (Public Law 280 is codified as amended in 18 U.S.C. § 1162, 28 U.S.C. § 1360), the *Cabazon* analysis has since been overlaid by a number of circuits onto cases involving Class III gaming under IGRA. Because IGRA only allows "Class III gaming activities" that are "permit[ted]" within the state in which the Indian lands are located, the *Cabazon* test has been used to determine whether a state permits or prohibits the Class III gaming activity at issue and, consequently,

whether that gaming activity is a proper subject of negotiations between the state and the tribe.

In this case, the district court relied heavily on the *Cabazon* analysis and, after a lengthy review of the *Cabazon* opinion and precedent from other circuits, the court concluded that Idaho prohibited gambling generally and casino gambling in particular. The court also found that gambling, including all forms of casino gambling, was contrary to the express public policy of the state. The court concluded that, based on "the combined IGRA and *Cabazon* analysis," Respondent did not have to negotiate with Petitioner over casino gambling.

Petitioner appealed to the Court of Appeals for the Ninth Circuit. The court of appeals affirmed the district court's judgment, stating "the judgment of the district court is affirmed substantially for the reasoning advanced in its opinion. . . . " Petitioner's brief, App. at 2. The court of appeals also affirmed "in part" based on its holding in *Rumsey Indian Rancheria of Winturn Indians v. Wilson*, 41 F.3d 421 (9th Cir. 1994). Petitioner sought a rehearing *en banc* which was denied. This petition for a writ of certiorari followed.

SUMMARY OF ARGUMENT

In this case, the district court surveyed all of the outstanding precedent available and concluded that it would reach the same result under the precedent from all the circuits. Subsequently, the Ninth Circuit Court of Appeals issued an intervening decision with which Petitioner disagrees. Petitioner asks this Court to grant certiorari to overturn the intervening precedent even though

the district court already applied the test Petitioner now demands that this Court announce on appeal. Moreover, the district court applied that standard properly and in accord with precedent from the other circuits. Therefore, this is not an appropriate case in which to grant certiorari.

ARGUMENT

BASED ON THE FACTS AND RECORD IN THIS CASE, THIS CASE IS NOT AN APPROPRIATE VEHICLE TO RESOLVE ANY PURPORTED SPLIT IN THE CIRCUITS CONCERNING IGRA

The crux of Petitioner's argument is that because the Ninth Circuit Court of Appeals did not apply the *Cabazon* civil/regulatory and criminal/prohibitory analysis to Class III gaming in *Rumsey Indian Rancheria of Winturn Indians v. Wilson*, 41 F.3d 421 (9th Cir. 1994), while the Second Circuit Court of Appeals did apply it in *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024 (2nd Cir. 1990), the Supreme Court should grant a writ of certiorari in Petitioner's case to resolve that difference and hold the Ninth Circuit's reasoning in *Rumsey* in error. However, the record in this case, which Petitioner has carefully avoided in its brief, is countervailing. This case is not *Rumsey*, which was not decided when the district court issued its opinion, and in this case the district court did apply the *Cabazon* analysis to the facts before it. Moreover, the district court's reasoning was expressly affirmed by the court of appeals. While there may be a split on the narrow issue of whether the *Cabazon* analysis should be applied to Class III gaming negotiations under IGRA, that

split has nothing to do with this case. The *Cabazon* analysis that Petitioner requests was, in fact, already applied by the district court, putting Petitioner in the untenable position of requesting that this Court issue a writ of certiorari and impose a legal standard that has already been applied at the district court level. This is not a good use of judicial resources.

When the district court decided this case, *Rumsey* had not yet been issued. The district court based its decision on what scope of Class III gaming must be negotiated on the language of IGRA, IGRA's legislative history, precedent from other circuits and the facts before it. Importantly, guided by precedent from other jurisdictions, the district court carefully applied the *Cabazon* civil/regulatory and criminal/prohibitory analysis when it rendered its decision.

The district court noted that when Congress enacted IGRA, it made the following finding:

> (5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and *is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.*

25 U.S.C. § 2701 (emphasis added). The district court went on to discuss the Class III gaming that Petitioner intended to operate on its reservation, including numerous forms of casino gambling such as card and dice games, baccarat, roulette, keno and slot machines and all other traditional forms of casino gambling or their electronic or electromechanical equivalents that are expressly prohibited by the Idaho Constitution and criminal laws.

The district court turned to the language of IGRA regarding Class III gaming. This language provides:

> Class III gaming activities shall be lawful on Indian lands only if such activities are . . . authorized by [tribal] ordinance or resolution . . . located in a State that permits such gaming for any purpose by any person, organization, or entity, and . . . conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State. . . .

25 U.S.C. § 2710(d)(1).

To determine the meaning of the phrase "located in a State that permits such gaming" and the scope of Class III gaming that must be negotiated under that provision, the district court exhaustively reviewed the history of IGRA and, in particular, the pre-IGRA *Cabazon* decision. The district court addressed at length the criminal/prohibitory and civil/regulatory distinction articulated in *Cabazon* and, after noting that the *Cabazon* decision was discussed in the legislative history of IGRA, concluded that "it is clear that the prohibitory/regulatory analysis contained in *Cabazon* must guide the court in resolving this dispute. Therefore, the court must evaluate Idaho law and public policy on gambling." Petitioner's brief, App. at 22. It is clear from this language that the district court used the *Cabazon* standard that Petitioner now requests to resolve what gaming activities had to be negotiated.

After concluding that the *Cabazon* standard should be applied to current Idaho law and not the law as it existed prior to 1992, the district court turned to the business of

applying the standard. The *Cabazon* standard is as follows:

> [I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub L 280's grant of criminal jurisdiction, but if the state law generally permits the conduct as issue, subject to regulation, it must be classified as civil/regulatory and Pub L 280 does not authorize its enforcement on an Indian reservation. *The shorthand test is whether the conduct at issue violates the State's public policy.*

California v. Cabazon Band of Mission Indians, 480 U.S. 202, 209 (1987) (emphasis added).

Applying this standard, the district court concluded that gambling, and in particular casino gambling, was against the express public policy of Idaho and was prohibited by the state:

> The Idaho Constitution expressly declares that all gambling is contrary to public policy and is strictly prohibited, except for three carefully limited exceptions: the state lottery, parimutuel betting if conducted in conformity with enabling legislation, and bingo and raffle games that are operated by qualified charitable organizations in the pursuit of charitable purposes.[10] In addition, the Idaho Constitution expressly forbids those engaging in the three carefully limited exceptions from employing any form of casino gambling including, but not limited to, blackjack, craps, roulette, poker, baccarat, keno and slot machines, or from employing any electrical or electromechanical imitation or simulation of any form of casino gambling.

> The Idaho Constitution further declares that the legislature shall provide for penalties for violation of the prohibition against gambling. Accordingly, Idaho Code § 18-3801 provides that those who engage in gambling (other than participation in the three exceptions allowed under the Idaho Constitution) shall be guilty of a misdemeanor.
>
> [10] Once permitted under Idaho law, charitable organizations are now prohibited from conducting casino nights or any form of casino gambling.

Petitioner's brief, App. at 36. The district court held that "under the combined IGRA and *Cabazon* analysis, the State must negotiate with the tribes only as to the conduct of a lottery and pari-mutuel betting on horse, mule and dog races. The state is not required to negotiate as to any other forms of Class III gaming." *Id.*, App. at 37.

To avoid the record in this case, Petitioner asserts that the district court, while claiming to apply the *Cabazon* standard, in fact ignored it. The district court's well-reasoned opinion belies this assertion. This Court has repeatedly said that a state's public policy "is to be ascertained by reference to the laws and legal precedent." *Muschany v. United States*, 324 U.S. 49, 66 (1944). The district court carefully reviewed the laws of the State of Idaho and, based on the state's constitutional prohibition against gambling in general and casino gambling in particular and the criminal statutes of this state, the district court properly concluded that under *Cabazon*'s "shorthand test," the activities Petitioner sought to negotiate violated the public policy of Idaho. Consequently, they did not have to be negotiated under IGRA.

However, Petitioner further seeks to avoid the district court's application of *Cabazon* by arguing that other jurisdictions that have applied *Cabazon* have held that if a state permits one form of Class III gaming then "all gaming or broad categories of gaming are negotiable." No circuit has so held. The district court addressed this issue thoroughly when it was raised by Petitioner below and pointed out that *Cabazon* has never been applied by any court in the manner Petitioner suggests. Rather, in those states in which Class III gaming is generally permitted and merely regulated, tribes have prevailed under a *Cabazon* analysis as to the types of games permitted or regulated. But, where Class III gaming activity was criminally prohibited and against public policy, as in Idaho, the tribes have never been found to have a right to engage in the prohibited gaming activity. Indeed, after reviewing the cases cited by Petitioner, *United States v. Sisseton-Wahpeton Sioux Tribe*, 897 F.2d 358 (8th Cir. 1990); *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024 (2nd Cir. 1990), *cert. denied*, 499 U.S. 975 (1991); *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 770 F. Supp. 480 (W.D. Wis. 1991); and *Ysleta Del Sur Pueblo v. Texas*, 852 F. Supp. 587 (W.D. Tex. 1993), *rev'd on other grounds*, 36 F.3d 1325 (5th Cir. 1994), the district court found that "all of the cases uniformly support[ed] the position taken by the State" and that there was no authority for the proposition that under a *Cabazon* analysis, a state's public policy construed as permitting a single Class III game must be found to permit all Class III gaming activities.

The district court's review of the opinions cited by Petitioner was exceptionally thorough. It is contained at

pp. 26-37 of the appendix to Petitioner's brief. Not only does this discussion dispel Petitioner's assertion that the district court incorrectly applied *Cabazon*, it also reveals the extent to which Petitioner has exaggerated the purported split between the Ninth and Second Circuits on the scope of Class III gaming negotiations. For example, in *Mashantucket*, while the Second Circuit Court of Appeals, unlike the Ninth Circuit Court of Appeals in *Rumsey*, applied a *Cabazon* analysis to determine what the scope of the Class III gaming negotiations should be, it did not hold, as Petitioner suggests, that if a state allows any form of Class III gaming, all Class III gaming is subject to negotiation with the tribes. Rather, in *Mashantucket*, the Second Circuit held that because Connecticut already allowed casino gambling for charitable purposes, Connecticut had to negotiate with the tribes regarding casino gambling. While the Ninth Circuit Court of Appeals may differ from the Second Circuit on whether to apply the *Cabazon* analysis to the scope of Class III gaming negotiations, both courts looked at what gaming the state permitted to determine what gaming the tribe could conduct. In fact, the Ninth Circuit pointed out in *Rumsey* that it agreed with the Second Circuit's conclusion in *Mashantucket*. *See Rumsey*, 41 F.3d at 428, n.4.[2]

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[2] The other cases cited by Petitioner to the district court and to this Court also do not support Petitioner's assertion that courts applying the *Cabazon* test hold that permitting one type of Class III games means all types of Class III games must be allowed. Again, the district court's reasoning in this case, at pp. 26-37 of the appendix to Petitioner's brief, is informative. For example, in *United States v. Sisseton-Wahpeton Sioux Tribe*, 897 F.2d 358 (8th Cir. 1990), one of the cases Petitioner cited to the district court, the court held only that because South Dakota

In terms of this case, more important than Petitioner's exaggeration of the difference between the Ninth and Second Circuit Courts of Appeals' approach to the scope of Class III negotiations, is that here the split Petitioner asserts makes no difference. Because *Rumsey* had not been issued when the district court decided this case, the district court applied the very standard Petitioner now demands, the *Cabazon* standard, and Petitioner lost. Petitioner's brief, App. at 4-45. Moreover, the district court applied the *Cabazon* standard properly, in the same fashion as it has been applied by other courts. Applying this standard, the district court correctly concluded that gambling generally and casino gambling in particular is prohibited by Idaho law and against Idaho public policy and, therefore, not a proper subject of negotiation under IGRA.

Traditionally, absent plain error, this Court defers to the interpretation of state law given to it by lower federal

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permitted commercial card games, including blackjack, the Indian tribe could also conduct a blackjack operation. In *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 770 F. Supp. 480 (W.D. Wis. 1991), the state constitution authorized a state lottery and did not prohibit any forms of gaming. The court in that case concluded the state had to negotiate gaming that was "not prohibited expressly by the Wisconsin Constitution or state law." *Ysleta Del Sur Pueblo v. State of Texas*, 852 F. Supp. 587 (W.D. Tex. 1993), the Fifth Circuit case Petitioner cited to the district court to support its position, has since been reversed by the Fifth Circuit based on the Eleventh Amendment. However, as the district court in this case explained, *Ysleta* also did not support Petitioner's characterization of the *Cabazon* test, but instead held only that since Texas already permitted casino gaming, it must negotiate with the tribes over casino gaming.

courts. *See Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 499-500 (1985). The district court's review of Idaho law was not erroneous and was expressly affirmed by the court of appeals. This particular case does not involve either a split in the circuits or an important federal question. Rather, it is a fact-bound/record-bound case in which the district court thoroughly reviewed, under the very standard Petitioner now demands, Idaho law and public policy and concluded Respondent should prevail. The *Rumsey* decision may be ultimately appealed to this Court.[3] If it is, at least the issue Petitioner raises will be implicated by the case. But, that issue is not implicated here. Given the facts and record in this case, Respondent respectfully asks that the petition for a writ of certiorari be denied.

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[3] On August 11, 1995, the *Rumsey* decision was amended and the suggestion for rehearing *en banc* was rejected. The tribe in *Rumsey* has until November 9, 1995, to file a petition for a writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari to the United States Court of Appeals to the Ninth Circuit should be denied.

Dated this 15th day of September, 1995.

Respectfully submitted,

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APPENDIX

15 U.S.C. § 1171. Definitions

As used in this chapter –

(a) The term "gambling device" means –

(1) any so-called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property, or

(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property;. . . .

(3)

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No. 95-275

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1995

COEUR D'ALENE TRIBE,
Petitioner,
vs.
STATE OF IDAHO,
Respondent.

BRIEF OF AMICI CURIAE NATIONAL INDIAN GAMING ASSOCIATION, SAN MANUEL BAND OF MISSION INDIANS, SHAKOPEE MDEWAKANTON SIOUX COMMUNITY, AND SISSETON WAHPETON SIOUX TRIBE

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No. 95-275

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COEUR D'ALENE TRIBE,
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BRIEF OF AMICI CURIAE NATIONAL INDIAN GAMING ASSOCIATION, SAN MANUEL BAND OF MISSION INDIANS, SHAKOPEE MDEWAKANTON SIOUX COMMUNITY, AND SISSETON WAHPETON SIOUX TRIBE

I.

INTEREST OF AMICI CURIAE

Amicus curiae National Indian Gaming Association (hereinafter the "Association") files this brief in support of petitioner Coeur d'Alene Tribe (hereinafter the "Tribe") pursuant to the written consent of all parties.[1] The Association is a national nonprofit organization representing the interests of more than 130 federally-recognized tribal governments that depend on gaming under the Indian Gaming Regulatory Act (hereinafter "IGRA" or the "Act"), 25 U.S.C. sections 2701-21, to fund tribal governmental programs including education, care for the elderly, housing, and health care. The San Manuel Band of Mission Indians, located in southern California, Shakopee Mdewakanton Sioux Community, located in

[1] The parties' consent to the filing of this amicus brief is appended hereto. *See* Appendix at 2a.

southern Minnesota, and the Sisseton Wahpeton Sioux Tribe, located in northeastern South Dakota, are members of the Association that depend on gaming for vital tribal governmental revenue.

Congress intended IGRA to allow tribes to operate gaming "as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. sec. 2702(1). Tribes' ability to achieve these goals depends in large part on the extent to which they can engage in class III gaming, which is the most economically competitive form of gaming available.[2] The Ninth Circuit has interpreted IGRA in a way that drastically reduces the types of class III games that may be included in tribal-state compacts. The Association shares the Tribe's belief that the Ninth Circuit's interpretation of the scope of permissible class III gaming under IGRA is wrong as a matter of law, and that it will, if not reversed, prevent tribes from achieving Congress' goals of economic development, self-sufficiency, and strong tribal governments.

For these reasons, the Association respectfully suggests that the Court grant the Tribe's petition for a writ of certiorari.

II.

SUMMARY OF ARGUMENT

This case satisfies four distinct grounds for granting the Tribe's petition. *See* S. Ct. R. 10.1. First, the Ninth Circuit's decision conflicts with a decision of the Second Circuit. Second, the Ninth Circuit's decision departed from the accepted and usual course of judicial proceedings by rewriting IGRA to shift the burden of proof from states to tribes, and by reaching a holding that is contrary to the statute's plain language and legislative history, which anticipate that tribes and states will negotiate over the extent to which state laws may apply to class III gaming on Indian lands. Third, the court decided an important question of federal law — namely, the test for

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[2] IGRA divides gaming into three classes, which are defined at 25 U.S.C. sections 2703(6)-(8). Class I includes social or traditional games, while class II includes bingo and similar games, as well as nonbanking card games. Class III includes lotteries, horse racing, house banked card games, slot machines, and other casino games, which are commonly operated by states and private interests. Competition from state and private gaming enterprises, and the importance of class III gaming in the marketplace, mean that when tribes are deprived of class III opportunities they are unlikely to achieve the economic development illustrated *infra* at section III(C) of this brief, which occurs when the class III process works.

determining the permissible scope of class III gaming under IGRA — which has not been, but should be, settled by this court.

Fourth, the court decided a federal question in a way that conflicts with a number of this Court's applicable decisions. Specifically, the Ninth Circuit's approach would effect a dramatic state law intrusion on tribal sovereignty, without the express congressional authorization that this Court's decisions require. The Ninth Circuit also refused to give the same terms, which Congress used in IGRA, the same meaning, as this Court has suggested is appropriate. Finally, the Ninth Circuit failed to interpret a term of art in federal Indian law, which Congress used in IGRA, according to its judicially-established meaning, as this Court's decisions require.

III.

ARGUMENT

A. THE NINTH CIRCUIT'S DECISION CONFLICTS WITH A DECISION OF THE SECOND CIRCUIT

In *Mashantucket Pequot Tribe v. Connecticut*, 913 F.2d 1024 (2nd Cir. 1990), *cert. denied*, 499 U.S. 975 (1991), the Second Circuit held that the permissible scope of class III gaming was determined by the civil-regulatory, criminal-prohibitory, public policy test articulated by this Court in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) (hereinafter "*Cabazon* test").

In the instant case, the Ninth Circuit affirmed the district court, relying on *Rumsey Indian Rancheria of Wintun Indians v. Wilson*, 41 F.3d 421 (9th Cir. 1994), *amended on denial of rehearing*, 95 D.A.R. 10855 (August 11, 1995).[3] In *Rumsey*, the Ninth Circuit expressly held that the *Cabazon* test does not determine the permissible scope of class III gaming. *See Rumsey*, 95 D.A.R. at 10859. In so doing, that court created a direct conflict with the Second Circuit's decision in *Mashantucket Pequot Tribe*. Indeed, the *Rumsey* panel expressly acknowledged its split with the Second Circuit:

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[3]On August 21, 1995, the Ninth Circuit sua sponte issued an order in *Rumsey* staying the issuance of the mandate, and asking the parties for further briefing on the significance of a recently-decided California case. A copy of the *Rumsey* order is appended hereto. *See* Appendix at 183a. Given the *Coeur d'Alene* panel's wholesale reliance on *Rumsey*, a substantive modification of the *Rumsey* decision might well warrant reversal and remand for reconsideration in this case. Thus this Court should consider staying this case pending issuance of the mandate in *Rumsey*.

"we disagree, for the reasons expressed above, with the *Mashantucket* court's use of the Class II legislative history to interpret IGRA's Class III provisions . . ." *Rumsey*, 95 D.A.R. at 10861 n. 5. In addition, six Ninth Circuit judges, dissenting from a denial of a tribal petition for rehearing en banc in *Rumsey*, recognized that the panel decided *Rumsey* "in a manner that conflicts with the Second Circuit's interpretation of the same statutory language." *Rumsey*, 95 D.A.R. at 10856. Finally, the inter-circuit conflict encompasses not only the Second and Ninth circuits, but also the Fifth, Seventh, and Eighth circuits as well.[4]

By adopting the *Rumsey* analysis, the panel in this case similarly created a conflict with the Second Circuit. This reason alone warrants granting the Tribe's petition.

B. THE NINTH CIRCUIT'S DECISION DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS

The Ninth Circuit's decision departed from the accepted and usual course of judicial proceedings by imposing the full corpus of state law on tribes, a result which is contrary to IGRA's express language and legislative history. The court also departed from accepted judicial practice by reversing the burden of proof Congress allocated in IGRA. Each of these matters are addressed in turn.

1. The Ninth Circuit's Holding Is Contrary to IGRA's Plain Language and Legislative History, Which Anticipate That Tribes and States Will Negotiate over the Extent to Which State Laws May Apply to Class III Gaming on Indian Lands

By limiting the scope of permissible class III gaming to narrowly defined activities affirmatively permitted under state law, and rejecting "similar" games even though they do not contravene state public policy under the *Cabazon* test, the Ninth Circuit has at-

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[4]Both the Fifth and Seventh circuits have indicated their approval of using the *Cabazon* test to determine the permissible scope of class III gaming, consistent with the Second Circuit's approach. *See Willis v. Fordice*, 55 F.3d 633 (5th Cir. 1995) (affirming, without opinion, the district court's decision reported at 850 F. Supp. 523, 531-32 (S.D. Miss. 1994) (applying *Cabazon* test to scope of class III gaming)); *Forest County Potawatomi v. Norquist*, 45 F.3d 1079, 1083 (7th Cir. 1995) (*citing* with approval *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 770 F. Supp. 480 (W.D. Wis. 1991), *appeal dismissed*, 957 F.2d 515 (7th Cir. 1992)). On the other hand, the Ninth Circuit's rejection of the *Cabazon* test is consistent with the Eight Circuit's approach in *Cheyenne River Sioux Tribe v. South Dakota*, 3 F.3d 273 (8th Cir. 1993).

tempted to subject class III tribal gaming to the full corpus of state gaming laws. That approach is contrary to IGRA's plain language and legislative history, which anticipate that tribes and states will negotiate over the extent to which state laws may apply to Indian gaming.

Nowhere in IGRA did Congress express an intent to subject tribes wishing to engage in class III gaming to the full body of state gambling laws. IGRA's findings include the *Cabazon* test's language: they do not so much as hint that Congress desired to subject Indian tribes to all state gaming laws.[5] Nor do Congress' stated purposes in enacting IGRA include any suggestion that state law was to apply whole cloth to tribal gaming. See 25 U.S.C. sec. 2702. To the contrary, two of IGRA's express provisions suggest that Congress did *not* intend the full corpus of state gaming laws to apply to Indian tribes.

First, IGRA provides that Indian tribes and states may negotiate regarding ***"the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity"*** for inclusion in tribal-state compacts governing class III gaming. 25 U.S.C. sec. 2710(d)(3)(C)(I) (emphasis added).[6] Certainly the types of class III games that tribes may offer are routinely negotiated and included in tribal-state compacts. *See* Department of the Interior, Bureau of Indian Affairs, *Tribal State Compact List*,

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[5] In enacting IGRA, Congress found in part that:

> (5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, ***as a matter of criminal law and public policy, prohibit such activity.***

25 U.S.C. sec. 2701 (emphasis added). *Cf. Cabazon*, 480 U.S. at 209.

[6] IGRA's Senate Report notes that section 2710(d)(3)(C) should be read expansively:

> Section [2710](d)(3)(C) describes the issues that may be the subject of negotiations between a tribe and a state in reaching a compact. The Committee recognizes that subparts of each of the broad areas may be more inclusive. For example, licensing issues under clause (vi) may include agreements on days or hours of operation, wage and pot limits, types of wagers, and size and capacity of the proposed facility. A compact may allocate most or all of the jurisdictional responsibility to the tribe, to the state or to any variation in between. The Committee does not intend that compacts be used as a subterfuge for imposing state jurisdiction on tribal lands.

S. Rep. No. 446, 100th Cong., 2d Sess. 1 (1988), *reprinted in* 1988 U.S. Code Cong. & Admin. News 3071, 3084 (hereinafter "Senate Report").

(January 26, 1995), Appendix at 11-48a. *See also Hearing Before the Committee on Indian Affairs on S. 2230*, 103rd Cong., 2d Sess. 226 (July 19, 1994) (statement of Ray Halbritter, Nation Representative Oneida Indian Nation of New York) (hereinafter "Halbritter Testimony"), Appendix 179a (Oneida-New York compact determines, inter alia, "the games offered"). If, as the *Rumsey* panel opined, individual state gaming laws — as opposed to the state's general public policy toward the class of activity at issue — governs the entire scope of permissible class III gaming that may occur on Indian lands, section 2710(d)(3)(C) of IGRA would be meaningless. Such an interpretation departs from long-accepted judicial practice. *See National Labor Relations Board v. Health Care Retirement Corp.*, 114 S.Ct. 1778, 1783 (1994) (rejecting interpretation rendering portions of a statute meaningless); *Ward v. Race Horse*, 163 U.S. 504, 508 (1896) ("Unless the districts thus referred to [are to] be taken as controlling the words 'unoccupied lands,' then the reference to the hunting districts would become wholly meaningless, and the cardinal rule of interpretation would be violated, which ordains that such construction be adopted as gives effect to all the language of the statute").

Second, Congress' intention that tribes not be subjected to the full corpus of state gaming laws and regulations is also evident in 18 U.S.C. section 1166. Section 1166 makes all state gambling laws applicable on Indian lands, but ***expressly excludes*** from the definition of "gambling" all gambling conducted pursuant to IGRA.[7] If Congress had intended state laws to govern Indian gaming under compacts, section 1166(c) would be superfluous. Referring to section 1166(c), the dissent from denial of rehearing en banc in *Rumsey* observed, "under *Rumsey* . . . [t]he state has no duty to begin negotiations, ***even though under IGRA a compact may permit the tribe to operate games that state law otherwise prohibits.***"

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[7] Section 1166 provides that:

> (a) ***Subject to subsection (c)***, for purposes of Federal law, all State laws pertaining to the licensing, regulation, or prohibition of gambling, including but not limited to criminal sanctions applicable thereto, shall apply in Indian country in the same manner and to the same extent as such laws apply elsewhere in the State . . . (c) For the purpose of this section, the term "gambling" ***does not include*** — (1) class I gaming or class II gaming regulated by the Indian Gaming Regulatory Act, or (2) class III gaming conducted under a Tribal-State compact approved by the Secretary of the Interior under [section 2710(d)(8)] that is in effect.

25 U.S.C. sec. 1166 (emphasis added).

Rumsey, 95 D.A.R. at 10856-57 (Canby, J., dissenting) (emphasis added).

Moreover, IGRA's legislative history reveals that, in an earlier version of the Act that did not become law, Congress considered subjecting tribal class III gaming to state law: "The bill reported to the House floor in April, 1986, allowed the proposed National Indian Gaming Commission and the tribes to regulate both class II and III gaming. ***Class III gaming would have been regulated in accordance with State rules and regulations governing such gaming.***" Senate Report at 3073 (emphasis added). The fact that Congress seriously considered subjecting tribal class III gaming to the full corpus of state laws and regulations, but rejected that approach in IGRA, suggests that the Ninth Circuit erred in its interpretation of the Act. *See, e.g., Patterson v. McLean Credit Union*, 485 U.S. 617, 620 (1988); *Herb's Welding, Inc. v. Gray*, 470 U.S. 414, 422 (1985); *Quern v. Jordan*, 440 U.S. 332, 345 (1979).

Despite the complete absence of any expression — much less a clear expression — of Congressional intent to subject Indian tribes to the full corpus of state gaming laws, the *Rumsey* and *Coeur d'Alene* panels' rejection of the *Cabazon* test embodies just such a notion. *Rumsey* ended its inquiry at California Penal Code sections 330, 330a, and 330b, which purport to forbid banking and percentage games and slot machines. *See Rumsey*, 95 D.A.R. at 10858-59. The State of Connecticut made this same argument in *Mashantucket Pequot Tribe*. In rejecting that view, the Second Circuit explained that under Connecticut's — and now the Ninth Circuit's — erroneous approach:

> even where a state does not prohibit class III gaming as a matter of criminal law and public policy, an Indian tribe could nonetheless conduct such gaming only in accordance with, and by acceptance of, the entire state corpus of laws and regulations governing such gaming. The compact process that Congress established as the centerpiece of the IGRA's regulation of class III gaming would thus become a dead letter; there would be nothing to negotiate, and no meaningful compact would be possible.

Mashantucket Pequot Tribe, 913 F.2d at 1030-31.

The Second Circuit concluded, contrary to the Ninth Circuit, that Congress intended that:

> "Even if a tribe engages in class III gaming pursuant to a compact with the State, it does not necessarily follow that the tribe is subject to the entire body of State law on gaming. The tribe and the State may negotiate terms such as 'the application

> of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity.' "

Mashantucket Pequot Tribe, 913 F.2d at 1031 (*quoting United States v. Sisseton-Wahpeton Sioux Tribe*, 897 F.2d 358, 366 n. 10 (8th Cir. 1990) (*quoting* IGRA, 25 U.S.C. sec. 2710(d)(3)(C)(I))).

The Ninth Circuit's interpretation of IGRA's class III provisions is directly contrary to Congress' carefully crafted legislative compromise consisting of tribal-state compacts:

> After lengthy hearings, negotiations and discussions, the Committee concluded that the use of compacts between tribes and states is the best mechanism to assure that the interests of both sovereign entities are met with respect to the regulation of complex gaming enterprises such as pari-mutuel horse and dog racing, casino gaming, jai alai and so forth. The Committee notes the strong ***concerns of states that state laws and regulations relating to sophisticated forms of class III gaming be respected on Indian lands where, with few exceptions, such laws and regulations do not now apply. The Committee balanced these concerns against the strong tribal opposition to any imposition of State jurisdiction over activities on Indian lands. The Committee concluded that the compact process is a viable mechanism for setting various matters between two equal sovereigns.***

Senate Report at 3083 (emphasis added). As the dissent from denial of rehearing en banc in *Rumsey* noted, Congress' "whole idea was to foster these [tribal-state] compacts. That goal is defeated if the details of the state's regulatory schemes, allowing some games and prohibiting others, apply . . . . " *Rumsey*, 95 D.A.R. 10856 (Canby, J., dissenting).

The Coeur d'Alene Tribe's petition should be granted because, contrary to Congress' intent, the Ninth Circuit's decision subjects Indian tribes to the full corpus of state gaming laws, a result that departs from the accepted and usual course of judicial proceedings.[8]

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[8] *See, e.g., Allied-Bruce Terminix Companies, Inc. v. Dobson*, 115 S.Ct. 834, 843 (1995) (rejecting a result "directly contrary to the Act's language and Congress's intent"). *See also Good Samaritan Hospital v. Shalala*, 113 S.Ct. 2151, 2157 (1993) ("if the intent of Congress is clear, that is the end of the matter"); *Farrar v. Hobby*, 113 S.Ct. 56, 577 (1993) ("this Court is bound by the choices Congress has made").

2. The Ninth Circuit Rewrote IGRA, Shifting the Burden of Proof from States to Tribes

Congress expressly provided in IGRA that: "the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities." 25 U.S.C. sec. 2710(d)(7)(B)(ii)(II). As Representative Udall recognized, IGRA "requires the State to bargain in good faith with the tribe requesting such a compact and imposes the burden of proof on the State in any court test. Where the State's refusal to enter into the agreement is based upon its position that the activity should not take place at all, ***it must be incumbent upon the State to make a clear showing that the activity will have a significant adverse impact upon the public.***" 134 Cong. Rec. H 8153 (Sept. 26, 1988) (Rep. Udall) (emphasis added).[9]

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[9] IGRA's Senate Report confirms the statute's plain language placing the burden of proof on the states:

> the bill allows States to consider negative impacts on existing gaming activities. That is not to say that the bill would allow States to reject Indian gaming on the mere showing that Indian gaming will compete with non-Indian games. Rather, States must show that economic consequences will be severe and that they will clearly outweigh positive economic consequences. Burden of proof. — Section 11(d)(7) grants a tribe the right to sue a State if compact negotiations are not concluded. This section is the result of the Committee balancing the interests and rights of tribes to engage in gaming against the interests of States in regulating such gaming. Under this act, Indian tribes will be required to give up any legal right they may now have to engage in class III gaming if: (1) they choose to forgo gaming rather than to opt for a compact that may involve State jurisdiction; or (2) they opt for a compact and, for whatever reason, a compact is not successfully negotiated. In contrast, States are not required to forgo any State governmental rights to engage in or regulate class III gaming except whatever they may voluntarily cede to a tribe under a compact. Thus, given this unequal balance, the issue before the Committee was how best to encourage States to deal fairly with tribes as sovereign governments. The Committee elected, as the least offensive option, to grant tribes the right to sue a State if a compact is not negotiated and chose to apply the good faith standard as the legal barometer for the State's dealings with tribes in class III gaming negotiations. While a tribe must show a prima facie case, after doing so the burden will shift to the State to prove that it did act in good faith. The Committee notes that it is States not tribes, that have crucial information in their possession that will prove or disprove tribal allegations of failure to act in good faith.

Senate Report at 3084.

Congress' allocation of the burden of proof to the states follows from its codification of the *Cabazon* test in IGRA. By incorporating the *Cabazon* test into IGRA, Congress logically required a state to prove that a proposed gaming activity, which it did not wish to include in a tribal-state compact, violated its public policy. By rejecting the *Cabazon* test, the Ninth Circuit, in this case and in *Rumsey*, has effectively shifted this burden from states to tribes. *Rumsey* would require that tribes prove that each of their proposed gaming activities are affirmatively authorized by some state law.[10] Rather than the states proving that their fundamental public policy is offended by the proposed gaming activities — as IGRA and its legislative history require — under the Ninth Circuit's decisions, the tribes would bear the burden of proving the games they seek to include in a tribal-state compact are allowed by existing state law.

For example, in *Rumsey*, the court opined that the fact that California allows banking and percentage games, as well as card games, does not mean that tribes may engage in banking card games. *See Rumsey*, 95 D.A.R. at 10859-60. The court did not require California to demonstrate that its public policy regarding gambling — which this Court held to be civil/regulatory in *Cabazon* — would be offended by banking card games, while comfortably tolerating non-banking card games and banking games played with devices other than cards.

By effectively rewriting IGRA to shift the burden of proof that Congress established, the Ninth Circuit has departed from the accepted and usual course of judicial proceedings.[11]

C. THE NINTH CIRCUIT DECIDED A FEDERAL QUESTION OF VITAL IMPORTANCE TO INDIAN TRIBES WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT

The interpretation of a federal statute — namely, the test for the scope of permissible class III gaming under IGRA — is obviously a question of federal law. See *Mesa v. California*, 489 U.S. 121, 129 (1989). The importance of this question to the 500-plus federally-recognized Indian tribes in this nation, and their more than one million members, cannot be understated. As a study conducted for the

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[10]The Ninth Circuit held that "IGRA does not require a state to negotiate over one form of Class III gaming activity simply because it has legalized another, albeit similar form of gaming." *Rumsey*, 95 D.A.R. at 10860.

[11]*See Badaracco v. C.I.R.*, 464 U.S. 386, 398 (1984) ("Courts are not authorized to rewrite a statute . . .").

Association, which was submitted to Senate hearings on proposed amendments to IGRA, noted:

> The lack of a vital economy on reservations makes it nearly impossible to improve tribal conditions. This hopeless environment and constant struggle help to explain the high incidence of alcoholism and suicide, and the lack of adequate health care in many tribal communities. According to the 1990 Census, the poorest counties in the United States are located on Indian Reservations. There are 3,200 counties in the United States. Of the poorest 1% (32 counties), 7 are located on Sioux reservations in South and North Dakota. In addition, several other Indian Reservations in various counties in the United States were also listed among the 32 poorest counties.

Deloitte & Touche, *A Historical Review of Gaming in the United States* (appended to Senate Hearings, May 17, 1994) (hereinafter "Deloitte Study"), Appendix at 85a.

In enacting IGRA, Congress found that "a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government." 25 U.S.C. at sec. 2701(4). Congress recognized that:

> bingo revenues have enabled tribes, like lotteries and other games have done for State and local governments, to provide a wider range of government services to tribal citizens and reservation residents than would otherwise have been possible. For various reasons, not all tribes can engage in profitable gaming operations. However, ***for those tribes that have entered into the business of business, the income often means the difference between an adequate governmental program and a skeletal program that is totally dependent on Federal funding.***

Senate Report at 3072 (emphasis added).

In *Cabazon*, this Court recognized the potential scale and impact of tribal gaming projects:

> [Tribes engaged in gaming] have built modern facilities which provide recreational opportunities and ancillary services to their patrons, who do not simply drive onto the reservations, make purchases and depart, but spend extended periods of time there enjoying the services the Tribes provide. The Tribes have a strong incentive to provide comfortable, clean, and attractive facilities and well-run games in order to increase attendance at the games. The tribal bingo enterprises are similar to the resort complex, featuring hunting and fishing, that the Mescalero Apache Tribe operates on its reservation through the "con-

> certed and sustained" management of reservation land and wildlife resources. *New Mexico v. Mescalero Apache Tribe*, 462 U.S., at 341. The Mescalero project generates funds for essential tribal services and provides employment for tribal members.

Cabazon, 480 U.S. at 219-20.

Where states and tribes have signed compacts governing class III gaming, the vital economic benefits Congress sought for tribes through IGRA have been realized. Existing class III operations, which are only possible after a tribal-state compact has been reached,[12] vividly demonstrate the benefits such activities provide:

> [T]ribe-owned gaming is an important economic development activity for Indian tribes. In the States where Indian tribes and States have worked together on a government-to-government basis, the objectives of the IGRA have begun to materialize to the benefit of both governments. Tribes have used gaming revenues to provide better governmental services for tribal members, better health care, higher quality education and employment.

Oversight Hearings on the Need for Amendments to the Indian Gaming Regulatory Act: Hearing Before the Committee of Indian Affairs, 103rd Cong., 2d Sess. 69 (1994) (testimony of Ada E. Deer, Assistant Secretary, Indian Affairs, Department of the Interior) (hereinafter "Deer Testimony"), Appendix at 67a.

Minnesota entered into compacts with tribes soon after IGRA was passed. As a study conducted for the Minnesota Indian Gaming Association by KPMG Peat Marwick documented, Minnesota wit-

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[12] The Bureau of Indian Affairs reports that as of July 7, 1995, 123 tribes in 24 States have entered into 139 Tribal-State compacts under IGRA. *See* Department of Interior, Tribal-State Compact List, January 26, 1995, Appendix at 4a. Despite the apparent success for both tribes and states once a compact is signed, most states which have signed compacts first compelled litigation. Disagreements about the scope of permissible class III gaming are at the heart of most, if not all, litigation under IGRA. *See, e.g., Rumsey*, 95 D.A.R. 10858; *Coeur d'Alene*, 51 F.3d 876 (9th Cir. 1995); *Seminole Tribe of Florida v. Florida*, 11 F.3d 1016 (11th Cir. 1994) *cert. granted*, 115 S.Ct. 932 (1995); *Cheyenne River Sioux Tribe v. South Dakota*, 3 F.3d 273 (8th Cir. S.D. 1993); *Sault St. Marie Tribe of Chippewa Indians v. State of Michigan*, 800 F. Supp. 1484 (W.D. Mich. 1992); *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin*, 770 F. Supp. 480 (W.D. Wisc. 1991), *appeal dismissed*, 957 F.2d 515 (7th Cir. 1991). Until such disputes are resolved, tribal and congressional goals for self-sufficiency and meaningful state participation in the regulatory process remain frustrated.

nessed remarkable growth of tribal self-sufficiency and freedom from federal welfare dependency following implementation of class III compacts. *See* KPMG Peat Marwick, *Economic Benefits of Tribal Gaming in Minnesota 1992*, Appendix at 133-36a. The number of welfare recipients under the federal Aid to Families with Dependent Children program in Minnesota decreased by 14 percent between 1987 and 1992 in eight non-urban counties with Indian gaming, whereas statewide the number of welfare recipients increased 17 percent for the same period. *See* Deloitte Study, Appendix at 98a. Indian gaming has directly created nearly 10,000 jobs for Minnesotans, and has indirectly created an estimated 20,000 additional jobs. *Id.*

In South Dakota, the positive impact tribal gaming projects have had on tribes and non-Indians communities is even more pronounced. In written testimony submitted to the Senate Hearings, Dr. Michael K. Madden, Professor of Economics, University of South Dakota, reported that prior to Indian gaming, aggregate tourist spending in the five counties in which tribal governments now raise money through gaming projects totaled only about $8 million. By 1993, after the tribes began their class III operations pursuant to tribal-state compacts, tourist spending had increased in those counties to about $31 million, an increase of 281 percent. *See* Madden, *Preliminary Estimates of Economic Impacts Related to Tribal Gaming in South Dakota*, Senate Hearings, May 17, 1974, Appendix at 149a. Professor Madden noted other benefits to Tribal and State economies:

> New wages and salaries in the regions surrounding the tribal casinos are estimated to be more than $25 million. Because most regions surrounding the tribal casinos are of low population, these added earnings have produced significant relative impacts on personal income within communities . . . .
>
> The use of [profits from tribally-owned casinos] vary from tribe to tribe. Some of the resources have been allocated to infrastructure improvements relating to the casinos themselves. Examples include lodging and camping facilities as well as additions to casino capacity. Other economic development programs have also been pursued. Training and educational programs for tribal members have been instituted or expanded within a number of the tribes.

Id., Appendix at 150-51a.

The Wisconsin Winnebago Nation has nearly 5,000 members, and was impoverished for many years. The opportunity to use gaming under IGRA's compacting process, as the Wisconsin tribes were able to do only after protracted litigation,[13] not only benefitted the Winnebago Nation in countless ways, but also contributed significantly to the community around it. As Tribal Chair JoAnn Jones explained to Congress:

> Indian gaming is not about gaming. It is about survival and bringing my people out of the third world conditions that they have lived in for generations. It is about sovereignty and the right of one government to operate free from the interference of another government. Finally, it is about an agreement and compromise worked out among sovereign governments.
>
> When Congress established the National Indian Gaming Regulatory Act it said the Act had three purposes: Promote tribal economic development, self sufficiency, and strong tribal government. Indian gaming in Wisconsin is doing all of these things and more.
>
> The Winnebago Nation employs more than 2000 people. Nearly 80% of these people are employed at our gaming enterprises. Employment has quadrupled in the last two years. More than 60% of these employees are non-Indian. More than 300 of our gaming employees came from the welfare roles. Statewide, Indian gaming jobs took 800 people off welfare and 1400 more from the unemployment rolls. Casino income is the sole support for the families of nearly 80% of the casino employees. According to [State] Health & Social Service Secretary Gerald Whitburn, state aid to Indian families has dropped. He says that Indian gaming is a major reason for this drop.

Testimony of JoAnn Jones, Chair, Wisconsin Winnebago Nation, Senate Hearings, April 26, 1994, at 68, Appendix at 158-59a. A survey of tribal government gaming employees in Wisconsin revealed that 820 employees in 1992 had been welfare recipients prior to going to work for a tribe's gaming project, saving the State approximately $1.6 million and the federal government $1.4 million. Deloitte Study, Appendix at 100a.

In Michigan, the Sault St. Marie Tribe of Chippewa Indians, with a citizenship of approximately 20,000 members, has experienced similar results, most of which came after the State of Michigan, following five years of negotiation and litigation, entered into tribal-

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[13] *See Lac du Flambeau*, 770 F. Supp. 480.

state compacts.[14] The tribe is the sole owner and operator of all its gaming operations. *See* Testimony of Bernard Bousher, Tribal Chairman, Senate Hearings, April 27, 1994, (hereinafter "Bousher Testimony"), Appendix at 164a. Like the Wisconsin Winnebago Nation, which employs over 300 persons in connection with surveillance, security and internal accounting controls,[15] the Sault St. Marie Tribe has invested substantial resources in order to satisfy the congressional mandate of providing gaming entertainment that is conducted fairly and honestly, not only for the tribe, but for the customers as well. Bousher Testimony, Appendix at 166a. *See*, 25 U.S.C. § 2702(2). And like the experience in other states, many of Sault St. Marie's patrons are tourists, thus developing the economies of both the reservation and the greater community as well. *See, e.g.*, Letter from Sault Area Chamber of Commerce to Governor John Engler, dated May 13, 1993, Senate Hearings, April 26, 1994, Appendix at 170-71a. Mayor Bruce J. Dodson of nearby St. Ignace, Michigan, reports that in an area formerly suffering from a 47 percent unemployment rate, "every able bodied person is now working in a three county area . . . the Tribe has certainly been one of the main contributors." Appendix at 174-75a.

In New York State, the Oneida Nation, which had a 44 percent unemployment rate in 1990, is now the second largest employer in Central New York. Halbritter Testimony, Appendix at 179a. The Oneida Nation's transformation has been typical of other tribes that finally obtained the tribal-state compact Congress envisioned:

> Thanks to revenue from the casino, the Nation is able to house, feed, and educate its people, to nurture and enhance the Oneida's unique culture, to repossess ancestral homeland, to significantly benefit the local community, to research and develop other business enterprises, and to otherwise provide for the seven generations yet to come as our culture requires us to do.

Id., Appendix at 179a.

The uses of gaming revenues on Indian reservations permitted by IGRA, *see* 25 U.S.C. § 2710(b)(2)(B), reinforces the importance of tribal governmental participation in this burgeoning aspect of the entertainment and leisure industry. According to the KPMG Peat Marwick study, for example, in 1992 Minnesota tribes provided over $17 million for tribal housing, $39.5 million in direct services to tribal members, and $800,000 in charitable donations. Another

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[14] *See Sault St. Marie Tribe of Chippewa Indians*, 800 F. Supp. 1484.

[15] *See* Jones Testimony, Appendix at 157a.

$4 million was generated for human services and tribal educational programs. *See* KPMG Peat Marwick study, Appendix at 126a.

Gaming revenue is likely to become even more important to tribal governments and their members in the future, particularly in light of Congress' contemplated cuts to the Bureau of Indian Affairs' budget of approximately $200,000,000, amounting to more than 25 percent of the agency's budget. Discussing the impact these cuts will have, Senator McCain, Chairman of the Committee on Indian Affairs, noted that: "the proposed cuts we are talking about will devastate Indian country. They strike at reservation services and reservation programs. They strike at Indian families and individual households. They strike at the practical ability of tribal governments to govern." 141 Cong. Rec. S11969-04 (August 9, 1995), Appendix at 50-51a.[16]

In contrast to the success stories outlined *supra*, Assistant Secretary Deer specifically noted the difficulties caused by non-compacting states: "In those States that have refused to negotiate with tribes, the tribes' efforts at achieving economic stability and self-sufficiency have been effectively frustrated." Deer Testimony, Appendix at 67a. All of the benefits discussed *supra* have arisen from class III gaming conducted under tribal-state compacts in which the scope of permitted games was set by reference to the *Cabazon* test. If let stand, the Ninth Circuit's rejection of the *Cabazon* test will, contrary to Congress' intent, deny the hundreds of tribes located in the western United States the opportunity to develop economic self-sufficiency and strong tribal governments. *See* 25 U.S.C. sec. 2701(4).

In sum, the proper interpretation of the scope of class III gaming under IGRA is a federal question of vital importance to this nation's Indian tribes and surrounding non-Indain communities.

D. THE NINTH CIRCUIT DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT

1. The Ninth Circuit's Approach Represents a Dramatic Diminution of Tribal Sovereignty, Without the Express Congressional Authorization That This Court's Decisions Require

It is well-settled that "Congress has acted consistently upon the assumption that the States have no power to regulate the affairs of

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[16] *See also* David Rogers, *Senate Clears Natural-Resources Bill, Softening Cuts for Arts, But Not Indians*, Wall Street Journal, August 10, 1995, at A2, Appendix at 58a; Associated Press, *For Indians, Budget Cuts Put Schools in Disrepair*, New York Times, Sept. 3, 1995, Appendix at 62a.

Indians on a reservation." *Williams v. Lee*, 358 U.S. 217, 220 (1959). Thus "State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply." *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 170-71 (1973).[17]

The clarity with which Congress must speak if it truly intends to subject tribes to state laws is apparent in *Bryan*'s holding that Public Law 280, 28 U.S.C. section 1360(a), did not give the named states civil regulatory jurisdiction over tribes. *See Bryan*, 426 U.S. at 377-79. This Court noted that ***"Congress kn[ows] well how to express its intent directly when that intent [is] to subject . . . Indians to the full sweep of state laws."*** *Id.* at 389 (emphasis added).[18]

In holding that IGRA subjects tribes to the full corpus of state gaming laws, *Rumsey* and *Coeur d'Alene* ignored this Court's previous decisions requiring that any such incursion into tribal sovereignty be clearly expressed by Congress. As the discussion above at section III(B)(1) of this brief illustrates, Congress did not clearly intend to subject tribes to state law, but rather intended that tribes and states negotiate over the extent, if any, to which such laws will regulate gaming on Indian lands.

2. Congress' Use of Identical Language Describing the Scope of Class II and Class III Gaming Requires That Language Receive the Same Meaning

The Ninth Circuit held that the word "permits" "has different meanings with respect to class II and class III gaming." *Rumsey*, 95 D.A.R. at 10860, 10861, & n. 4. Thus the *Rumsey* panel declined to recognize that "[a] term appearing in several places in a statutory text is generally read the same way each time it appears." *Ratzlaf v. United States*, 114 S.Ct. 655, 660 (1994); *Commissioner of Internal Revenue v. Keystone Consolidated Industries, Inc.*, 113 S.Ct. 2006, 2011 (1993).

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[17] *See also Cabazon*, 480 U.S. at 207 (state laws may only be applied to tribal lands "if Congress has expressly so provided"); *Bryan v. Itasca County, Minnesota*, 426 U.S. 373, 376 n. 2 (1976).

[18] *See also Mattz v. Arnett*, 412 U.S. 481, 504 n. 22 (1973) (observing that Congress generally employs "clear language of express termination when that result is desired") (collecting examples); *Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 702 (1st Cir. 1994) (because of the "strong congressional bias . . . against policies that would promote Indian assimilation . . . we are of the view that acts diminishing the sovereign rights of Indian tribes should be strictly construed").

IGRA, like the statute at issue in *Ratzlaf*, uses a "single formulation"— the "permits" language — which "is called into play" in more than one place in the statute, namely, in sections 2710(d)(1)(B)(class III), and 2710(b)(1)(B) (class II). " 'If courts can render meaning so malleable, the usefulness of a single . . . provision for a group of related code sections will be eviscerated and . . . almost any code section that references a group of other code sections would become susceptible to individuated interpretation.' " *Ratzlaf*, 114 S.Ct. at 660 (*quoting United States v. Aversa*, 984 F.2d 493, 498 (1st Cir. 1993) (en banc)).

This rule of construction has particular force in this case because the only other reference in IGRA to scope of gaming, which is found in the Congressional Findings section of the Act, 25 U.S.C. sec. 2701(5), does not distinguish between class II and class III gaming activities. Instead, Congress' Findings quote the *Cabazon* test as the standard for determining all scope of gaming questions. *See* 25 U.S.C. sec. 2701(5) ("Indian Tribes have the exclusive right to regulate gaming activities on Indian lands if the gaming activity is . . . conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity").

3. Congress Used a Legal Term of Art — "Permits" — in IGRA, Which Must be Interpreted According to its Judicially-Established Meaning

This Court has held that, as a general matter of statutory construction, when Congress uses a term of art that has been defined by prior judicial interpretation, federal courts assume "Congress intended it to have its established meaning." *McDermott International, Inc. v. Wilander*, 498 U.S. 337, 342 (1991)("we assume that when a statute uses such a [maritime law] term [of art], Congress intended it to have its established meaning").[19]

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[19] *See also Commissioner of Internal Revenue v. Keystone Consolidated Industries, Inc.*, 113 S.Ct. at 2011; *Corning Glass Works v. Brennan*, 417 U.S. 188, 201 (1974)("where Congress has used technical words or terms of art, 'it (is) proper to explain the terms by reference to the art or science to which they (are) appropriate' "); *Bradley v. United States*, 410 U.S. 605, 609 (1973) ("Rather than using terms in their everyday sense, '(t)he law uses familiar legal expressions in their familiar legal sense' "); *Barber v. Gonzales*, 347 U.S. 637, 641 (1954)("While it is true that statutory language should be interpreted whenever possible according to common usage, some terms acquire a special technical meaning by a process of judicial construction").

In the field of federal Indian law generally, and in reviewing the extent to which state laws apply on Indian tribal lands specifically, the term "permits" has acquired a special meaning by a process of judicial construction. After applying the civil-regulatory, criminal-prohibitory test, this Court concluded in *Cabazon* that "California ***permits*** a substantial amount of gambling activity." *Cabazon*, 480 U.S. at 211 (emphasis added).[20]

The Ninth Circuit has interpreted the term "permits" in IGRA, section 2710(d)(1)(B), in a way that is contrary to its established meaning as a term of art in the field of federal Indian law. In so doing, the Ninth Circuit has interpreted IGRA in a way that conflicts with applicable decisions of this Court holding that judicially-defined terms of art are to be given their established meaning.

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[20] *See also Confederated Tribes of the Colville Reservation v. State of Washington*, 938 F.2d 146 (9th Cir. 1991) ("the issue is whether or not the Washington law relating to speeding should be classified as either criminal/prohibitory or civil/regulatory. If the former, then Washington possess jurisdiction and its law can be enforced, but if the latter then such power is lacking. Laws which absolutely prohibit certain acts fall into the first category, while those generally ***permitting*** certain conduct but subject to regulation are within the second") (emphasis added) (citations omitted).

IV.

CONCLUSION

For these reasons, the Association and amici tribes respectfully request that this Court grant the Tribe's petition for a writ of certiorari.

Dated: September 18, 1995

Respectfully submitted,

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Appendix 1

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P.O. Box 969
Coeur d'Alene, Idaho 83814
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No. 95-275

SUPREME COURT OF THE UNITED STATES

COEUR D'ALENE TRIBE,
Petitioner,

VS.

STATE OF IDAHO,
Respondent.

CONSENT TO AMICUS CURIAE

COME NOW the parties through their respective counsel to give notice to the Court that the parties consent to the filing of a brief amicus curiae by the National Indian Gaming Association in this case.

DATED this 6th day of September, 1995.

DAVID G. HIGH

David G. High
Attorney for Respondent
State of Idaho

DATED this 7th day of September, 1995.

RAYMOND C. GIVENS

Raymond C. Givens
Attorney for Petitioner
Coeur d'Alene Tribe

Appendix 2

TRIBAL-STATE COMPACT LIST

TRIBAL INFORMATION FOR THOSE WITH APPROVED TRIBAL-STATE COMPACTS AS OF JULY 7, 1995

123 TRIBES — 24 STATES — 139 COMPACTS 36 AMENDMENTS/ADDENDUMS

THIS LIST IS MAINTAINED AND UPDATED AS NEW COMPACTS/AMENDMENTS ARE PUBLISHED IN THE FEDERAL REGISTER BY THE INDIAN GAMING MANAGEMENT STAFF, BUREAU OF INDIAN AFFAIRS, OFFICE OF THE COMMISSIONER, (202) 219-4068.

* Tribe has compact(s) with more than one state.
** Tribe has more than one compact for different types of games.

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Hualapai Tribe.....

Kaibab Paiute Tribe .....

Pascua Yaqui Tribe.....

Quechan Indian Tribe.....

San Carlos Apache Tribe .....

Tohono O'Odham Tribe .....

Tonto Apache Tribe .....

White Mountain Apache Tribe .....

Yavapai-Apache Indian Community.....

Yavapai-Prescott Tribe .....

California — 5 Tribes

Barona Band of the Capitan Grande of Diegueno Mission Indians .....

Cabazon Band of Cahuilla Mission Indians .....

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Crow Creek Sioux Tribe.....

Flandreau Santee Sioux Tribe .....

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Nookback Indian Tribe of Washington.....

Port Gamble S'Klallam .....

Quileute Tribal Council .....

Squaxin Island Indian Tribe.....

Suquamish Tribe .....

Swinomish Indian Tribal Community.....

Tulalip Tribes of Washington.....

Upper Skagit Indian Tribe .....

Wisconsin — 11 Tribes

Bad River Band of Lake Superior Tribe of Chippewa Indians .....

Forest County Potawatomi Community .....

Lac Courte Oreilles Band of Lake Superior Chippewa .....

Lac Du Flambeau Band of Lake Superior Chippewa

Menominee Indian Tribe of Wisconsin.....

Oneida Tribe of Indiana of Wisconsin .....

Red Cliff Band of Lake Superior Chippewa .....

St. Croix Chippewa Indians of Wisconsin .....

Sokaogan Chippewa Community.....

Stockbridge-Munsee Community of Mohican Indians of Wisconsin.....

Wisconsin Winnebago Indian Tribe .....

ARIZONA — 16 TRIBES

AK-CHIN INDIAN COMMUNITY
Chairman
Rt. 2, Box 27
Maricopa, Arizona 85007 (602) 568-2648
Compact approved 3/19/93; published 3/31/93
Superceded by Compact approved 7/30/93; published 8/18/93
Gaming Devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutuel Wagering on Dog Racing

COCOPAH TRIBE OF ARIZONA
Chairman
Bin G
Somerton, Arizona 85350 (602) 627-2102
Compact approved 8/17/92; published 8/24/92
Suspended by Compact approved 7/30/93; published 8/18/93
Gaming Devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutuel Wagering on Dog Racing

COLORADO RIVER INDIAN TRIBES
Chairman
Route 1, Box 23-B
Parker, Arizona 85344 (602) 669-5271
Compact approval 7/29/94; published 8/9/94
Gaming Devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutuel Wagering on Dog Racing

FORT McDOWELL MOHAVE-APACHE INDIAN COMMUNITY
President
Post Office Box 17779
Fountain Hills, Arizona 852699 (602) 990-0995
Compact approved 12/23/92; published 12/30/92
Superseded by Compact approved 7/30/93; published 8/18/93
Gaming Devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutuel Wagering on Dog Racing

FORT MOJAVE INDIAN TRIBE*
Chairperson
300 Merriman
Needles, California 92363 (610) 326-4591
Compact approved 10/22/93; published 11/10/93
Gaming Devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutuel Wagering on Dog Racing

GILA RIVER INDIAN COMMUNITY
Governor
Post Office Box 97
Sacaton, Arizona 85247 (602) 562-3311
Compact approved 8/1/94; published 8/18/93
Gaming Devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutuel Wagering on Dog Racing

HUALAPAI TRIBE
Chairman
P.O. Box 179
Peach Springs, Arizona 86434 (602) 769-2216
Compact approval 4/15/94; published 4/26/94
Gaming Devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutuel Wagering on Dog Racing

KAIBAB PAIUTE TRIBE
Chairperson
Tribal Affairs Building
Pipe Spring, Arizona 86022 (602) 643-7245
Compact approved 4/8/94; published 4/26/94
Gaming Devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutuel Wagering on Dog Racing

PASCUA YAQUI TRIBE
Chairman
7474 S. Camino De Oeste
Tucson, Arizona 85746 (602) 883-2838
Compact approved 7/30/93; published 2/18/94
Gaming Devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutuel Wagering on Dog Racing

QUECHAN INDIAN TRIBE
President
P.O. Box 11352
Yuma, Arizona 85364 (619) 572-0213
Compact approved 1/7/94; published 1/14/94
Gaming Devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutuel Wagering on Dog Racing

SAN CARLOS APACHE TRIBE
Chairman
P.O. Box O
San Carlos, Arizona 85550 (602) 475-2361
Compact approved 10/25/93; published 11/10/93
Gaming Devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutuel Wagering on Dog Racing

TOHONO O'ODHAM TRIBE
Chairman
Post Office Box 837
Sella, Arizona 85634 (602) 383-2221
Compact approved 7/30/93; published 8/18/93
Gaming Devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutuel Wagering on Dog Racing

TONTO APACHE TRIBE
Chairperson
Tonto Reservation #30
Payson, Arizona 85541 (602) 474-5000
Compact approved 8/11/93; published 8/18/93
Gaming Devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutual Wagering on Dog Racing

WHITE MOUNTAIN APACHE TRIBE
Chairman
Post Office Box 700
Whiteriver, Arizona 85941 (602) 338-4346
Compact approved 7/30/93; published 8/18/93
Gaming Devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutuel Wagering on Dog Racing

YAVAPAI-APACHE INDIAN COMMUNITY
Chairman
Post Office Box 1183
Camp Verde, Arizona 86322 (602) 567-3649
Compact approved 8/11/93; published 8/18/93
Gaming Devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutuel Wagering on Dog Racing

YAVAPAI-PRESCOTT TRIBE
President
530 East Merritt Street
Prescott, Arizona 86301-2038 (602) 445-8790
Compact approved 7/15/92; published 7/21/92
Suspended by Compact approved 8/11/93; published 8/18/93
Gaming devices; Keno; Lottery; Off-Track Pari-Mutuel Wagering; Pari-Mutuel Wagering on Horse Racing; Pari-Mutuel Wagering on Dog Racing

CALIFORNIA — 5 TRIBES

BARONA BAND OF THE CAPITAN GRANDE OF DIEGUENO MISSION INDIANS
Chairman
1095 Barona Road
Lakeside, California 92040 (619) 443-6612
Compact approved 6/23/92; published 6/30/92
Pari-Mutuel Wagering on Horse Racing

CABAZON BAND OF CAHUILLA MISSION INDIANS
Chairman
84-235 Indio Spring Drive
Indio, California 92201 (619) 342-2593
Compact approved 3/27/90; published 4/02/90
Pari-Mutuel Wagering on Horse Racing

SAN MANUEL BAND OF SERRANO MISSION INDIANS
Chairman
5438 North Victoria Avenue
Highland, California 92346 (714) 862-8509
Compact approved 3/26/91; published 4/02/91
Pari-Mutuel Wagering on Horse Racing

SYCUAN BAND OF DIEGUENO MISSION INDIANS
Spokesperson
5459 Dehesa Road
El Cajon, California 92021 (619) 445-2613
Compact approved 10/10/90; published 10/18/90
Pari-Mutuel Wagering on Horse Racing

VIEJAS GROUP OF CAPITAN GRANDE BAND OF DIEGUENO MISSION INDIANS
Chairman
Post Office Box 908
Alpine, California 92201 (619) 445-3810
Compact approved 6/25/90; published 6/29/90
Pari-Mutuel Wagering on Horse Racing

COLORADO — 2 TRIBES

SOUTHERN UTE INDIAN TRIBE
Chairman
Post Office Box 737
Ignacio, Colorado 81137 (303) 563-4033
Compact approved 10/01/92; published 10/08/92
Slot Machines; Blackjack; Racing; Off-track Betting; Keno; Lottery

UTE MOUNTAIN UTE TRIBE
Chairman
Towaoc, Colorado 81334 (303) 565-3751
Compact approved 7/06/92; published 7/10/92
Blackjack; Poker; Slot Machines; Keno

CONNECTICUT — 2 TRIBES

MASHANTUCKET PEQUOT TRIBE
Chairman
Box 160 — Indiantown Road
Ladyard, Connecticut 06339 (203) 536-2681

Compact approved 5/24/91; published 5/31/91
Blackjack; Poker; Dice; Money-Wheels; Roulette; Baccarat; Chuck-a-Luck; Pan Game; Over & Under; Horse; Race Game; Acey-Ducey; Best the Dealer; Bouncing Ball; Lottery; Pari-Mutuel Wagering-Animal Races-Off Track Simulcasting on Reservation by Telephone; Pari-Mutuel Wagering-Jai Alai; Video Facsimiles—any Game of Chance

MOHEGAN INDIAN TRIBE
Chief
27 Church Lane
Uncasville, Connecticut 06382 (203) 848-9252

Compact approved 5/17/94; published 12/16/94
Blackjack; Poker; Dice; Money-Wheels; Roulette; Baccarat; Chuck-a-Luck; Pan Game; Over & Under; Horse Race Game; Acey-Ducey; Beat the Dealer; Bouncing Ball; Lottery; Off-Track Pari-Mutuel Betting on Animal Races; Pari-Mutuel Betting thru Simulcasting on Animal Races; Pari-Mutuel Betting on Jai Alai; Pari-Mutuel Betting on Dog Racing; Pari-Mutuel Betting on Horse Racing; Video Facsimiles on any Game of Chance; Telephone Betting on any Lottery Game; Off-Track Pari-Mutuel Telephone Betting on Animal Races

IDAHO — 2 TRIBES

COEUR D'ALENE TRIBE
Chairman
Tribal Headquarters
Plummer, Idaho 83851 (208) 274-3101
Compact approved 2/5/93; published 2/12/93
Lottery; Pari-Mutuel Wagering on Horses, Dogs, Mules; Simulcast of Racing

KOOTENAI TRIBE
Chairperson
P.O. Box 1269
Bonners Ferry, Idaho 83805-1269 (208) 267-3519
Compact approved 10/29/93; published 11/10/93
Lottery; Pari-Mutuel Wagering on Horses, Dogs, Mules; Simulcast of Racing

IOWA — 3 TRIBES

OMAHA TRIBE OF NEBRASKA*
Chairman
Post Office Box 368
Macy, Nebraska 68039 (402) 837-5391
Compact approved 2/24/92; published 2/28/92
Dice Games; Slot Machines; Video Games of Chance; Wheel Games; Simulcasting Card Games; Sport Betting Pools & Sports Betting; Lotteries; Parlor Games

SAC AND FOX TRIBE OF MISSISSIPPI IN IOWA
Chairman
3137 F Avenue
Tama, Iowa 52339 (515) 484-4678
Compact approved 4/24/92; published 4/30/92
Superseded by Compact approved 5/18/95; published 6/23/95
Any or all Class III games that, as of the date of this compact, are permitted within the State of Iowa

WINNEBAGO TRIBE OF NEBRASKA
Chairman
Winnebago, Nebraska 68701 (402) 878-2272
Compact approved 4/22/92; published 4/30/92
Lotteries; Keno; Pari-Mutuel Betting on Simulcast Horse or Dog Races; Video Games of Chance; Slot Machines; Twenty-one; Red Dog; Roulette; Big Six; Craps; Poker; Sports Betting Pools; Sports Betting; Parlay Cards

KANSAS — 2 TRIBES

IOWA TRIBE OF KANSAS AND NEBRASKA
Chairman
Route 1, Box 58A
White Cloud, Kansas 66094 (913) 595-3258
Compact approved 6/26/95; published 7/6/95
Blackjack; Poker; All other banking and non-banking card games; Craps; All other banking and non-banking dice games; Roulette; Baccarat-chemin de fer; Wheel of Fortune; Keno; Games of chance utilizing electronic gaming equipment comparable to that authorized for the Kansas Lottery; All other Class III games of chance authorized by the State in a compact with any Indian tribe.

PRAIRIE BAND OF POTAWATOMI INDIANS OF KANSAS
Chairperson
14880 K Road
Mayetta, Kansas 66509 (913) 966-2255

Compact approved 6/26/95; published 7/6/95
Blackjack; Poker; All other banking and non-banking card games; Craps; All other banking and non-banking dice games; Roulette; Baccarat-chemin de fer; Wheel of Fortune; Keno; Games of chance utilizing electronic gaming equipment comparable to that authorized for the Kansas Lottery; All other Class III games of chance authorized by the State in a compact with any Indian tribe.

LOUISIANA — 3 TRIBES

CHITIMACHA TRIBE OF LOUISIANA
Chairman
Tribal Center
Post Office Box 661
Charenton, Louisiana 70523 (318) 923-4973

Compact approved 6/18/93; published 7/6/93
Amended 6/3/94; published 6/14/94
Electronic Games of Chance; Blackjack; Roulette; Craps; Poker; Mini-Baccarat; Keno

COUSHATTA TRIBE OF LOUISIANA
Chairman
Post Office Box 818
Elton, Louisiana 70532 (318) 584-2209

Compact approved 10/29/92; published 11/04/92
Amended 2/21/95; published 3/1/95
Electronic Games of Chance, Baccarat; Mini Baccarat; Blackjack; Roulette; Craps; Poker; Keno

TUNICA-BILOXI TRIBE OF LOUISIANA
Chairman
Post Office Box 311
Mansura, Louisiana 71351 (318) 253-9767
Compact approved 11/10/92; published 11/19/92
Electronic Games of Chance; Blackjack; Roulette; Craps; Poker; Baccarat; Mini-Baccarat; Keno

MICHIGAN — 7 TRIBES

BAY MILLS INDIAN COMMUNITY
Chairman
Route 1
Brimley, Michigan 49715 (906) 248-3241
Compact approved 11/19/93; published 11/30/93
Craps; Dice Games; Wheel Games; Roulette; Banking Card Games; Electronic Games of Chances; Keno

GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS
Chairman
Route 1, Box 135
Suttons Bay, Michigan 49682 (616) 271-3538
Compact approved 11/19/93; published 11/30/93
Craps; Dice Games; Wheel Games; Roulette; Banking Card Games; Electronic Games of Chance; Keno

HANNAHVILLE INDIAN COMMUNITY
Chairman
N14911 Hannahville Boulevard Road
Wilson, Michigan 49896-9728 (906) 466-2342
Compact approved 11/19/93; published 11/30/93
Craps; Dice Games; Wheel Games; Roulette; Banking Card Games; Electronic Games of Chance; Keno

KEWEENAW BAY INDIAN COMMUNITY
Chairman
Center Building
Route 1, Box 45
Baraga, Michigan 49908 (906) 353-6623
Compact approved 11/19/93; published 11/30/93
Craps; Dice Games; Wheel Games; Roulette; Banking Card Games; Electronic Games of Chance; Keno

LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS
Chairman
P.O. Box 446
Watersmeet, Michigan 49969 (906) 358-4577
Compact approved 11/19/93; published 11/30/93
Craps; Dice Games; Wheel Games; Roulette; Banking Card Games; Electronic Games of Chance; Keno

SAGINAW CHIPPEWA INDIAN TRIBE
Chief
7070 East Broadway Road
Mt. Pleasant, Michigan 48858 (517) 772-3700
Compact approved 11/19/93; published 11/30/93
Craps; Dice Games; Wheel Games; Roulette; Banking Card Games; Electronic Games of Chance; Keno

SAULT STE. MARIE TRIBE OF CHIPPEWA
Chairperson
206 Greenough Street
Sault Ste. Marie, Michigan 49783 (906) 635-6050
Compact approved 11/19/93; published 11/30/93
Craps; Dice Games; Wheel Games; Roulette; Banking Card Games; Electronic Games of Chance; Keno

MINNESOTA — 11 TRIBES

BOIS FORTE BAND OF MINNESOTA CHIPPEWA (NETT LAKE)**
Chairman
Post Office Box 16
Nett Lake, Minnesota 55722 (218) 757-3261
Compact - Video Games of Chance appvd. 3/27/90; published 4/02/90
Compact - Blackjack approved 9/29/91; published 10/03/91

FOND DU LAC BAND OF MINNESOTA CHIPPEWA**
Chairman
105 University Road
Cloquet, Minnesota 55720 (218) 879-4593
Compact - Video Games of Chance appvd. 3/27/90; published 4/02/90
Compact - Blackjack approved 9/25/91; published 10/03/91

GRAND PORTAGE BAND OF MINNESOTA CHIPPEWA**
Chairman
P.O. Box 428
Grand Portage, Minnesota 55605 (218) 475-2279
Compact - Video Games of Chance appvd. 3/27/90; published 4/02/90
Compact - Blackjack approved 9/25/91; published 10/03/91

LEECH LAKE BAND OF MINNESOTA CHIPPEWA**
Chairman
Rt. 3, Box 100
Case Lake, Minnesota 56633 (218) 335-8200
Compact - Video Games of Chance appvd. 8/15/90; published 8/21/90
Compact - Blackjack approved 9/25/91; published 10/03/91

LOWER SIOUX INDIAN COMMUNITY**
President
Rural Route 1, Box 308
Morton, Minnesota 56270 (507) 697-6185
Compact - Video Games of Chance appvd. 3/27/90; published 4/02/90
Compact - Blackjack approved 9/25/91; published 10/03/91

MILLE LACS BAND OF MINNESOTA CHIPPEWA**
Chairperson
Star Route
HRC 67, Box 194
Onamia, Minnesota 56359 (612) 532-4181
Compact - Video Games of Chance appvd. 6/25/90; published 6/29/90
Compact - Blackjack approved 9/25/91; published 10/03/91

PRAIRIE ISLAND COMMUNITY OF THE MINNESOTA MDEWAKANTON SIOUX**
President
1158 Island Boulevard
Welch, Minnesota 55089 (612) 385-2554
Compact - Video Games of Chance appvd. 3/27/90; published 4/02/90
Amended 4/27/91; published 4/30/91
Compact - Blackjack approved 9/25/91; published 10/03/91

RED LAKE BAND OF CHIPPEWA INDIANS**
Chairman
P.O. Box 550
Red Lake, Minnesota 56671 (218) 679-3341
Compact - Video Games of Chance appvd. 9/02/91; published 8/09/91
Amended 9/09/92; published 9/16/92
Compact - Blackjack approved 9/23/91; published 10/03/91
Amended 9/09/92; published 9/16/92

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY**
Chairman
2330 Sioux Trail, NW
Prior Lake, Minnesota 55372 (612) 445-8900
Compact - Video Games of Chance appvd. 3/27/90; published 4/02/90
Compact - Blackjack approved 9/25/91; published 10/03/91

UPPER SIOUX INDIAN COMMUNITY**
Chairperson
Post Office Box 147
Granite Falls, Minnesota 56241 (612) 564-2360
Compact - Video Games of Chance approved 11/16/90
Amended 4/21/91; published 4/30/91
Compact - Blackjack approved 9/25/91; published 10/03/91

WHITE EARTH BAND OF MINNESOTA CHIPPEWA**
Chairman
Post Office Box 418
White Earth, Minnesota 56591 (218) 983-3185
Compact - Video Games of Chance approved 11/08/91; published 11/13/91
Compact - Blackjack approved 9/25/91; published 10/03/91

MISSISSIPPI — 1 TRIBE

MISSISSIPPI BAND OF CHOCTAW INDIANS
Tribal Chief
Post Office Box 6010
Philadelphia, Mississippi 39350 (601) 656-5251
Compact approved 1/15/93; published 1/29/93
Amended 10/29/94; published 11/09/94
Craps; Roulette; Blackjack; Poker; Baccarat-Chemin De Fer; Slots

MONTANA — 4 TRIBES

ASSINIBOINE & SIOUX TRIBES OF THE FORT PECK RESERVATION
Chairman
Post Office Box 1027
Poplar, Montana 59255 (406) 768-5155
Compact approved 6/24/92; published 6/30/92
Amended 9/01/92; published 9/08/92
Amended 4/07/93; published 4/14/93
Video Machines for Keno/Poker/Bingo; Simulcast Racing; Lottery

CHIPPEWA-CREE TRIBE OF THE ROCKY BOY'S RESERVATION
Chairman
Rocky Boy Route, Box 544
Box Elder, Montana 59521 (406) 395-4282
Compact approved 10/01/93; published 10/20/93
Video Gambling Machines for Bingo/Draw Poker/Keno; Simulcast Racing; Calcutta Pools; Fantasy Sports Leagues; Fishing Derbies & Betting on Natural Occurrences; Lotteries; Shake-a-Day & Shaking for Music or Drink; Raffles; Live Keno; Sports Pools; Tab Games

CROW TRIBE
Chairman
Post Office Box 159
Crow Agency, Montana 59022 (406) 638-2601
Compact approved 6/30/93; published 7/12/93
Amendment approved 9/19/93; published 9/28/93
2nd Amendment approved 11/5/93; published 11/30/93
Video Gaming Machines; Simulcast Racing; Calcutta Pools; Fantasy Sports Leagues; Lotteries; Fishing Derbies; Raffles; Live Keno; Betting on Natural Occurrences; Shake-a-Day; Sports Pools; Tab Games

NORTHERN CHEYENNE TRIBE
President
Post Office Box 128
Lame Deer, Montana 59043 (406) 477-8283
Compact approved 4/15/93; published 5/3/93
Correction to Notice 5/14/93; published 6/3/93
Superseded by Compact Approved 12/13/93; published 12/27/93
Video Gaming Machines; Simulcast Racing; Calcutta Pools; Fantasy Sports Leagues; Lotteries Fishing Derbies; Betting on Natural Occurrences; Lotteries; Shake-a-Day; Raffles; Live Keno; Sports Pools; Tab Games

NEBRASKA — 1 TRIBE

OMAHA TRIBE OF NEBRASKA*
Chairman
Post Office Box 368
Macy, Nebraska 68039 (402) 847-5391
Compact approved 12/31/90; published 1/08/91
Keno; Lottery Ticket Drawings; Big Six; Big Nine; Card Wheel; Color Wheel; Fruit Wheel; Horse Race Wheel; Money Wheel; Roulette; Chuck-a-luck; Sic Bo

NEVADA — 3 TRIBES

FORT MOJAVE TRIBAL COUNCIL*
Chairperson
500 Merriman Avenue
Needles, California 92363 (619) 326-4591
Compact approved 3/27/90; published 4/20/90
Casino Type Gaming

LAS VEGAS PAIUTE TRIBE
Chairperson
Number One Paiute Drive
Las Vegas, Nevada 89106 (702) 386-3926
Compact approved 9/9/94; published 9/21/94
Casino Type Gaming

MOAPA BAND OF PAIUTE INDIANS
Chairperson
Box 340
Mospa, Nevada 89025 (702) 865-2787
Compact approved 12/9/94; published 12/22/94
Slots Only

NEW MEXICO — 14 TRIBES

JICARILLA APACHE TRIBE
President
P.O. Box 507
Dulce, New Mexico 87528 (505) 759-3242
Compact approved 3/15/95; published 3/22/95
Any or all Class III games that, as of the date of this compact, are permitted within the State of New Mexico for any purpose.

MESCALERO APACHE TRIBE
President
P.O. Box 176
Mescalero, New Mexico 88340 (505) 671-4495
Compact approved 3/15/95; published 3/22/95
Any or all Class III games that, as of the date of this compact, are permitted within the State of New Mexico for any purpose.

PUEBLO OF ACOMA
Governor
P.O. Box 209
Acoma, New Mexico 87034 (505) 522-6604
Compact approved 04/24/95; published 5/15/93
Any or all Class III games that, as of the date of this compact, are permitted within the State of New Mexico for any purpose.

PUEBLO OF ISLETA
Governor
P.O. Box 1270
Isleta, New Mexico 87022 (505) 869-3111
Compact approved 3/15/95; published 3/22/95
Any or all Class III games that, as of the date of this compact, are permitted within the State of New Mexico for any purpose.

PUEBLO OF NAMBE
Governor
P.O. Box 117BB
Nambe Pueblo, New Mexico 87501 (505) 455-2036
Compact approved 04/24/95; published 05/15/95
Any or all Class III games that, as of the date of this compact, are permitted within the State of New Mexico for any purpose.

PUEBLO OF POJOAQUE
Governor
Route 11, Box 71
Santa Fe, New Mexico 87501 (505) 455-2278
Compact approved 3/15/95; published 3/22/95
Any or all Class III games that, as of the date of this compact, are permitted within the State of New Mexico for any purpose.

PUEBLO OF SANDIA
Governor
Box 6008
Bernalillo, New Mexico 87004 (505) 867-3317
Compact approved 3/15/95; published 3/22/95
Any or all Class III games that, as of the date of this compact, are permitted within the State of New Mexico for any purpose.

PUEBLO OF SAN FELIPE
Governor
P.O. Box 4339
San Felipe Pueblo, New Mexico 87001 (505) 867-3381
Compact approved 3/15/95; published 3/22/95
Any or all Class III games that, as of the date of this compact, are permitted within the State of New Mexico for any purpose.

PUEBLO OF SAN ILDEFONSO
Governor
Route 5, Box 315-A
Santa Fe, New Mexico 87501 (505) 455-2273
Compact approved 06/02/95; published 06/12/95
Any or all Class III games that, as of the date of this compact, are permitted within the State of New Mexico for any purpose.

PUEBLO OF SAN JUAN
Governor
P.O. Box 1099
San Juan Pueblo, New Mexico 87566 (505) 852-4400
Compact approved 3/15/95; published 3/22/95
Any or all Class III games that, as of the date of this compact, are permitted within the State of New Mexico for any purpose.

PUEBLO OF SANTA ANA
Governor
2 Dove Road
Bernalillo, New Mexico 87004 (505) 867-3301
Compact approved 3/15/95; published 3/22/95
Any or all Class III games that, as of the date of this compact, are permitted within the State of New Mexico for any purpose.

PUEBLO OF SANTA CLARA
Governor
P.O. Box 580
Espanola, New Mexico 87532 (505) 753-7326
Compact approved 3/15/95; published 3/22/95
Any or all Class III games that, as of the date of this compact, are permitted within the State of New Mexico for any purpose.

PUEBLO OF TAOS
Governor
P.O. Box 1846
Taos, New Mexico 87571 (505) 758-9593
Compact approved 3/15/95; published 3/22/95
Any or all Class III games that, as of the date of this compact, are permitted within the State of New Mexico for any purpose.

PUEBLO OF TESUQUE
Governor
Route 5, Box 360-T
Santa Fe, New Mexico 87501 (505) 983-2667
Compact approved 3/15/95; published 3/22/95
Any or all Class III games that, as of the date of this compact, are permitted within the State of New Mexico for any purpose.

NEW YORK — 2 TRIBES

ONEIDA INDIAN NATION
Nation Representative
Post Office Box 1 - West Road
Oneida, New York 13421 (315) 697-8251
Compact approved 6/4/93; published 6/15/93
Baccarat; Bang; Beat the Dealer, Bell Jars; Best Poker Hand; Big Nine; Big Six; Blackjack; Card Wheel; Chuck-a-Luck; Color Wheel; Craps; The Fruit Wheel; Hazard; Horse Race Game; Horse Race Wheel; Joker Seven; Keno; Merchandise Wheels; Mini-Baccarat; Money Wheel; Pai Gow; Red Dog; Acey Deucey; Roulette; Super Pan Game; Under & Over Seven

ST. REGIS MOHAWK TRIBE
Head Chief
Community Building
Hogansburg, New York 13655 (518) 358-2272
Compact approved 12/6/93; published 12/13/93
Amended 1/19/95; published 1/30/95
Baccarat; Bang; Beat the Dealer; Bell Jars; Best Poker Hand; Big Nine; Big Six Blackjack; Card/Color/Fruit Wheel; Chuck-a-Luck; Craps; Hazard; Horse Race Game; Horse Race Wheel; Joker Seven; Keno; Merchandise Wheels; Mini-Baccarat; Money Wheel; Pai Gow; Red Dog; Acey Deucey; Roulette; Super Pan Game; Under & Over Seven

NORTH CAROLINA — 1 TRIBE

EASTERN BAND OF CHEROKEE INDIANS
Principle Chief
Qualla Boundary
P.O. Box 455
Cherokee, North Carolina 28719 (704) 497-2771
Compact approved 9/22/94; published 10/3/94
Raffles; Video Games of Chance

NORTH DAKOTA — 5 TRIBES

DEVILS LAKE SIOUX TRIBE

Chairman
P.O. Box 359
Fort Totten, North Dakota 58335 (701) 766-4221

Compact approved 12/17/92; published 12/30/92
Pari-Mutuel Racing Addendum approved 8/3/93; published 8/18/93
Slot Machines; Video Lottery Terminals; Blackjack; Poker; Pari-Mutuel; Sports & Calcutta Pools; Pull-tabs; Raffles; Keno; Punchboard & Jars; Paddlewheels; Craps; Indian Dice

SISSETON-WAHPETON SIOUX TRIBE*

Chairman
Route 2 - Agency Village
Sisseton, South Dakota 57262 (605) 698-3911

Compact approved 1/25/93; published 2/3/93
Amended 7/1/94; published 7/13/94
Slot Machines; Paddle Wheels; Blackjack; Poker; Keno; Sports & Calcutta Pools; Pari-Mutuel & Simulcast Betting; Raffles; Punchboards; Craps; Indian Dice

STANDING ROCK SIOUX TRIBE*

Chairman
Post Office Box D
Fort Yates, North Dakota 58538 (701) 854-7231

Compact approved 12/8/92; published 12/21/92
Video Lottery Terminal; Slot Machine; Paddle Wheel; Blackjack; Poker; Keno; Sports & Calcutta Pools; Pari-Mutuel

THREE AFFILIATED TRIBES OF FORT BERTHOLD
Chairman
Post Office Box 220
New Town, North Dakota 58763 (701) 627-4781
Compact approved 12/03/92; published 12/11/92
Addendum approved 3/01/94; published 3/10/94
Video Lottery; Slot Machines; Blackjack; Poker; Keno; Punchboards; Paddlewheels; Craps; Indian Dice; Pari-Mutuel Wagering on Horse Racing

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS
Chairperson
Belcourt, North Dakota 58316 (701) 477-6451
Compact approved 11/27/92; published 12/03/92
Pari-Mutuel Racing Addendum apprvd. 7/14/93; published 7/29/93
Video Lottery; Slot Machines; Blackjack; Poker; Keno; Punchboards; Paddlewheels; Craps; Indian Dice; Pari-Mutuel Wagering on Horse Racing

OKLAHOMA — 2 TRIBES

MIAMI TRIBE OF OKLAHOMA
Chief
P.O. Box 1326
Miami, Oklahoma 74355 (918) 542-1445
Compact approved 04/07/95; published 04/20/95
Off-Track Pari-Mutuel Simulcast Horse Wagering

TONKAWA TRIBE OF OKLAHOMA
Chairperson
P.O. Box 70
Tonkawa, Oklahoma 74653 (405) 628-2561
Compact approved 10/28/94; published 11/09/94
Off-Track Pari-Mutuel Simulcast Horse Wagering

OREGON — 8 TRIBES

CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SIUSLAW INDIANS
Chairman
455 South Fourth
Coos Bay, Oregon 97420 (503) 267-5454
Compact approved 2/3/95; published 2/16/95
Video Lottery; Keno; Off-race Course Mutuel Wagering

COQUILLE INDIAN TRIBE
Chairman
295 S. 10th
P.O. Box 1435
Coos Bay, Oregon 97420 (503) 267-4587
Compact approved 2/1/95; published 2/16/95
Video Lottery; Keno; Off-race Course Mutuel Wagering

COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
Chairman
2400 Stewart Parkway, Suite 300
Roseburg, Oregon 97470 (503) 672-9405
Compact approved 11/20/92; published 11/30/92
Amended 1/17/95; published 1/30/95
Video Lottery; Keno

CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY
Chairman
P.O. Box 638
Grand Ronde, Oregon 97347 (503) 879-5211
Compact approved 6/10/94; published 6/17/94
Amended 2/21/95; published 3/1/95
Video Lottery; Keno; Off-race Course Mutuel Wagering

THE KLAMATH TRIBES
Chairman
P.O. Box 436
Chiloquin, Oregon 97624 (503) 783-2029
Compact approved 2/13/95; published 2/24/95
Video Lottery; Keno; Off-race Course Mutuel Wagering

THE CONFEDERATED TRIBES OF SILETZ INDIANS OF OREGON
Chairman
P.O. Box 549
Siletz, Oregon 97380 (503) 444-2532
Compact approved 3/14/95; published 3/22/95
Video Lottery; Keno; Off-race Course Mutuel Wagering

UMATILLA INDIAN TRIBE
Chairman
P.O. Box 638
Pendleton, Oregon 97801 (503) 276-3165
Compact approved 2/2/94; published 2/15/94
Amended 10/6/94; published 10/18/94
Video Lottery; Keno; Off-race Course Mutuel Wagering

THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON
Chairman
P.O. Box C
Warm Springs, Oregon 97761 (503) 553-1161
Compact approved 3/6/95; published 3/13/95
Video Lottery; Keno; Off-race Course Mutuel Wagering

RHODE ISLAND — 1 TRIBE

NARRAGANSETT INDIAN TRIBE
Chief Sachem
P.O. Box 268
Charlestown, Rhode Island 02813 (401) 364-1100
Compact approved 8/29/94; published 12/16/94
Blackjack; Poker; Caribbean Poker; Pai-gow; Dice; Money-Wheel; Roulette; Baccarat; Chuck-a-Luck; Pan Game; Over & Under; Horse Race Game; Acey-Deucey; Beat the Dealer; Bouncing Ball; Sic Bo; Red-dog; Any Game of Chance authorized in NJ, NV & CT; Any Lottery Game including Keno/Number/Lotto; Off-Track Pari-Mutuel Betting on Animal Races Pari-Mutuel Betting thru Simulcasting on Animal Races; Pari-Mutuel Betting on Jai Alai/Dog Racing/Horse Racing; Video Facsimiles of any Game of Change; Slot Machines; Telephone Betting on any Lottery Game; Off-Track Pari-Mutuel Telephone Betting on Animal Races

SOUTH DAKOTA — 9 TRIBES

CHEYENNE RIVER SIOUX TRIBE
Chairman
P.O. Box 590
Eagle Butte, South Dakota 57625 (605) 964-4155
Compact approved 11/19/93; published 12/03/93
Blackjack; Poker; Slot Machines

CROW CREEK SIOUX TRIBE
Chairman
P.O. Box 658
Ft. Thompson, South Dakota 57339 (605) 245-2221
Compact approved 4/09/92; published 4/15/92
Amended; published 4/08/93
Blackjack; Poker; Slot Machines

FLANDREAU SANTEE SIOUX TRIBE
President
P.O. Box 283
Flandreau, South Dakota 57028 (605) 997-3891
Compact approved 7/30/90; published 8/02/90
Blackjack; Poker; Slot Machines

LOWER BRULE SIOUX TRIBE
Chairman
Lower Brule, South Dakota 57548 (605) 473-5561
Compact approved 9/04/91; published 9/17/91
Amended 4/07/92; published 4/14/92
Blackjack; Poker; Slot Machines

OGLALA SIOUX TRIBE
President
Pine Ridge, South Dakota 57770 (605) 867-5659
Compact approved 10/14/93; published 10/28/93
Blackjack; Poker; Slot Machines

ROSEBUD SIOUX TRIBE
President
Rosebud, South Dakota 57570 (605) 747-2381
Compact approved 4/06/93; published 4/14/93
Blackjack; Poker; Slot Machines

SISSETON-WAHPETON SIOUX TRIBE*
Chairman
Route 2 - Agency Village
Sisseton, South Dakota 57262 (605) 698-3911
Compact for Slot Machines approved 3/25/91; published 4/01/91
Amended 9/24/93; published 10/07/93
Amended 1/26/95; published 2/16/95
Compact for Video Lottery approved 11/26/92; published 12/04/91

STANDING ROCK SIOUX TRIBE*
Chairman
P.O. Box D
Fort Yates, North Dakota 58538 (701) 854-7231
Compact approved 12/08/92; published 12/21/92
Blackjack; Poker; Slot Machines

YANKTON SIOUX TRIBE OF SOUTH DAKOTA
Chairman
P.O. Box 248
Marty, South Dakota 57361 (605) 384-3641
Compact approved 6/13/91; published 6/19/91
Blackjack; Poker; Slot Machines

WASHINGTON — 12 TRIBES

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION
Chairperson
P.O. Box 536
Oakville, Washington 98568 (206) 273-5911
Compact approved 2/22/93; published 3/04/93
Amended 04/04/95; published 04/20/95
Blackjack; Money-Wheel; Roulette; Baccarat; Chuck-a-Luck; Pai-Gow; Chemin De Fer; Craps; 4-5-6; Ship-Captain-Crew; Horses; Beat the Dealer; Over-Under Seven; Beat My Shake; Horse Race; Sweet Sixteen; Sport Pools; Sic-Bo; Caribbean Stud Poker; Lottery; Keno; Instant Tickets; Punch Boards; Pull-Tabs

JAMESTOWN S'KLALLAM TRIBE OF WASHINGTON
Chairman
305 Old Blyn Highway
Sequim, Washington 98382 (206) 683-1109

Compact approved 4/20/93; published 5/03/93
Amended 3/10/95; published 3/22/95

Blackjack; Caribbean Stud; Baccarat; Chemin de Fer; Red Dog; Pai Gow; Moneywheel Chuck-a-luck; Craps; 4-5-6; Ship-Captain-Crew; Horse (stop dice); Beat the Dealer; Over-Under Seven; Horse Race; Single & Double Zero Roulette; Beat My Shake; Sweet Sixteen; Sic-Bo; Sports Pools; other Table Games; Lottery type games; Punch Boards; Pull-Tabs

LOWER ELWHA KLALLAM TRIBE
Chairperson
1666 Lower Elwha Road
Port Angeles, Washington 98002 (206) 452-8471

Compact approved 2/11/93; published 2/19/93

Blackjack; Money-Wheel; Roulette; Baccarat; Chuck-a-Luck; Pai-gow; Chemin De Fer; Craps; Blackjack; 4-5-6; Ship-Captain-Crew; Horses; Beat the Dealer; Over-Under Seven; Beat My Shake; Horse Race; Sweet Sixteen; Sport Pools; Sic-Bo; Caribbean Stud Poker; Lottery; Keno Instant Tickets; Punch Boards; Pull-Tabs

MUCKLESHOOT INDIAN TRIBE
Chairperson
39015 172 Avenue, SE
Auburn, Washington 98002 (206) 939-3311

Compact approved 4/23/93; published 5/06/93
Baccarat; Beat My Shake; Beat the Dealer; Blackjack; Chemin De Fer; Chuck-a-Luck; Craps; Poker; 4-5-6; Horses; Horse Race; Money-Wheel; Over-Under Seven; Pai-gow; Poker; Red Dog; Roulette; Satellite (off-track) wagering on horses; Ship-Captain-Crew; Sic-Bo; Sports Pools; Sweet Sixteen; Punchboards; Washington State Lottery

NOOKSACK INDIAN TRIBE OF WASHINGTON
Chairman
P.O. Box 157
Deming, Washington 98224 (206) 592-5176

Compact approved 4/23/93; published 6/23/92
Amendment approved 7/11/94; published 7/20/94
Amendment approved 4/03/95; published 4/12/95
Blackjack; Money Wheel; Roulette; Baccarat; Chuck-a-Luck; Pai-gow; Red Dog; Chemin De Fer; Craps; 4-5-6; Ship-Captain-Crew; Horses (stop dice); Beat the Dealer; Over-Under Seven; Beat My Shake; Horse Race; Sweet Sixteen Sports Pools; Sic-Bo; Poker; Any other table games authorized for play in Nevada; Punch Boards; Pull-Tabs

PORT GAMBLE S'KLALLAM
Chairman
31912 Little Boston Road NE
Kingston, Washington 98346 (206) 297-2646

Compact approved 03/31/95; published 04/12/95
Baccarat; Beat My Shake; Beat the Dealer; Blackjack; Caribbean Stud Poker; Chemin De Fer; Chuck-a-luck; Craps; 4-5-6; Horses (stop dice); Horse Race; Money Wheel; Satellite (off-track); Wagering on Horse Races; Over-Under Seven; Pai-gow; Poker; Red Dog; Roulette; Ship-Captain-Crew; Sic-Bo; Sweet Sixteen; Any other table games authorized for play in Washington; Punchboards; Pull-Tabs; State Lottery

QUILEUTE TRIBAL COUNCIL
Chairman
P.O. Box 279
La Push, Washington 98350-0279 (206) 374-6163

Compact approved 2/13/95; published 2/24/95
Blackjack; Money-wheel; Roulette; Baccarat; Chuck-a-luck; Pai-gow; Red Dog; Chemi De Fer; Craps; 4-5-6; Ship-Captain-Crew; Horse (stop dice); Beat the Dealer; Over-under Seven; Beat My Shake; Horse Race; Sweet Sixteen; Sports Pools; Sic-Bo; Punchboards; Pull Tabs; Any other table games authorized for play in Washington; Keno

SQUAXIN ISLAND INDIAN TRIBE
Chairperson
Southeast 70 Squaxin Lane
Shelton, Washington 99040 (206) 426-3442

Compact approved 9/17/93; published 10/07/93
Amendment approved 04/04/95; published 04/20/95

Baccarat; Beat My Shake; Beat the Dealer; Blackjack; Chemin De Fer; Chuck-a-Luck; Craps; 4-5-6; Horses (stop dice); Horse Race; Money-Wheel; Satellite (off-track) wagering on horses; Roulette; Over-Under Seven; Pai-gow; Red Dog; Ship-Captain-Crew; Sic-Bo; Sweet Sixteen; Punchboards; Pull-Tabs

SUQUAMISH TRIBE
Chairman
Box 498
Suquamish, Washington 98392 (206) 652-7362

Compact approved 03/17/95; published 03/31/95

Blackjack; Money-Wheel; Roulette; Baccarat; Chuck-a-Luck; Pai-gow; Red Dog; Chemin De Fer; Craps; 4-5-6; Ship-Captain-Crew; Horses; Beat the Dealer; Over-Under Seven; Beat My Shake; Horse Race; Sweet Sixteen; Sic Bo; Sport Pools; Poker; Jackpot Poker and other forms of poker, Satellite (off-Track); Wagering on Horse Races; Keno and Keno-type games; Other Table Games Authorized by the State; Tribal Lottery; Horse Racing; Punch Boards; Pull-Tabs

SWINOMISH INDIAN TRIBAL COMMUNITY
Chairman
P.O. Box 817
La Conner, Washington 98257 (206) 466-3163
Compact approved 2/11/93; published 2/19/93
Amended 03/17/95; published 03/31/95
Blackjack; Money-Wheel; Roulette; Baccarat; Chuck-a-Luck; Pai-gow; Red Dog; Chemin De Fer; Craps; 4-5-6; Ship-Captain-Crew; Horses; Beat the Dealer; Over-Under Seven; Beat My Shake; Horse Race; Sweet Sixteen; Sic Bo; Sport Pools; Other Table Games Authorized by the State; Tribal Lottery; Horse Racing; Punch Boards; Pull-Tabs

TULALIP TRIBES OF WASHINGTON
Chairman
6700 Totem Beach Road
Marysville, Washington 98270 (206) 653-4585
Compact approved 9/25/91; published 10/03/91
Amended 7/20/92; published 7/24/92
Amended 12/07/93; published 12/20/93
Amended 03/17/95; published 03/31/95
Blackjack; Money Wheel; Roulette; Baccarat; Chuck-a-Luck; Pai-gow; Red Dog; Chemin de Fer; Craps; 4-5-6; Ship-Captain-Crew; Horses (stop dice); Beat the Dealer; Over-Under Seven; Beat My Shake; Horse Race; Sweet Sixteen; Sport Pools; Sic-Bo; Poker; Any other table games authorized for play in Nevada; Punch Boards; Pull-Tabs

UPPER SKAGIT INDIAN TRIBE
Chairman
2284 Community Plaza
Sedro Woolley, Washington 98284 (206) 856-5501
Compact approved 2/19/93; published 03/04/93
Amended 04/04/95; published 05/18/95
Blackjack; Money-Wheel; Roulette; Baccarat; Chuck-a-Luck; Pai-gow; Chemin De Fer; Craps; 4-5-6; Ship-Captain-Crew; Horses; Beat the Dealer; Over-Under Seven; Beat My Shake; Horse Race; Sweet Sixteen; Sports Pools; Sic-bo; Keno; Instant Tickets; On-Line Games; Lottery; Punch Boards; Pull-Tabs; Other Authorized Table Games

WISCONSIN — 11 TRIBES

BAD RIVER BAND OF LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS
Chairman
P.O. Box 39
Odanah, Wisconsin 54861 (715) 682-7111
Compact approved 3/30/92; published 4/03/92
Electronic Games of Chance; Blackjack; Pull-Tabs

FOREST COUNTY POTAWATOMI COMMUNITY
Chairman
P.O. Box 346
Crandon, Wisconsin 54520 (715) 478-2093
Compact approved 8/04/92; published 8/10/92
Electronic Games of Chance; Blackjack; Pull-Tabs

LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA
Chairman
Route 2, Box 2700
Hayward, Wisconsin 54843 (715) 634-8934
Compact & 1st Amendment approved 4/13/92; published 4/20/92
Electronic Games of Chance; Blackjack; Pull-Tabs

LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA
President
P.O. Box 67
Lac du Flambeau, Wisconsin 54538 (715) 588-3303
Compact approved 6/23/92; published 7/01/92
Electronic Games of Chance; Blackjack; Pull-Tabs

MENOMINEE INDIAN TRIBE OF WISCONSIN
Chairman
P.O. Box 397
Kashena, Wisconsin 54135 (715) 799-5100
Compact approved 8/03/92; published 8/10/92
Electronic Games of Chance; Blackjack; Pull-Tabs

ONEIDA TRIBE OF INDIANS OF WISCONSIN
Chairman
N7210 Seminary Road
Oneida, Wisconsin 54155 (414) 869-2772
Compact approved 1/24/92; published 1/30/92
Electronic Games of Chance; Blackjack; Pull-Tabs

RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA
Chairman
P.O. Box 529
Bayfield, Wisconsin 54814 (715) 779-3701
Compact approved 3/04/92; published 3/10/92
Electronic Games of Chance; Blackjack; Pull-Tabs

ST. CROIX CHIPPEWA INDIANS OF WISCONSIN
Chairman
Post Office Box 287
Hertel, Wisconsin 54845 (715) 349-2195
Compact approved 3/04/92; published 3/10/92
Electronic Games of Chance; Blackjack; Pull-Tabs

SOKAOGAN CHIPPEWA COMMUNITY
Chairman
Route 1, Box 625
Crandon, Wisconsin 54520 (715) 478-2604
Compact approved 2/06/92; published 2/13/92
Electronic Games of Chance; Blackjack; Pull-Tabs

STOCKBRIDGE-MUNSEE COMMUNITY OF MOHICAN INDIANS OF WISCONSIN
President
Route 1
Bowler, Wisconsin 54416 (715) 793-4111
Compact approved 4/15/92; published 4/23/92
Electronic Games of Chance; Blackjack; Pull-Tabs

WISCONSIN WINNEBAGO INDIAN TRIBE
Chairman
P.O. Box 667
Black River Falls, Wisconsin 54615 (715) 284-9343
Compact approved 7/30/92; published 8/05/92
Electronic Games of Chance; Blackjack; Pull-Tabs

Appendix 3

1995 WL 470060 (Cong.Rec.)
141 Cong.Rec. S11969-04

Congressional Record — Senate
Proceedings and Debate of the 104th Congress,
First Session
Wednesday, August 9, 1995

*S11969 DEPARTMENT OF THE INTERIOR APPROPRIATIONS, 1996

The PRESIDENT pro tempore.

The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 1977) making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1996, and for other purposes.

Pending:

Domenici amendment No. 2296, to restore funding for programs within the Bureau of **Indian** Affairs.

The Senate resumed consideration of the bill.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. INHOFE).

The Senator from Mexico is recognized.

Mr. DOMENICI.

I yield 5 minutes of the 15 minutes that I have to the distinguished Senator from Arizona <Mr. McCAIN>.

Mr. McCAIN.

Mr. President, the proposed cuts we are talking about will devastate **Indian** country. They strike at reservation services and reservation programs. They strike at **Indian** families and

individual households. They strike at the practical ability of tribal governments to govern.

Let me quote from a letter I received from the Quinault **Indian** Tribe in Washington State, regarding the proposed cuts in H.R. 1977:

These provisions . . . will mark the beginning of a new era of broken promises and hostility toward **Indian** nations which is unbecoming to the Senate and to a great Nation like the United States.

I would like my colleagues to understand the practical effect on just three tribes of these cuts.

The Pine Ridge Reservation of the Oglala Sioux Tribe, located in the poorest county in our country, a place 10,000 members of the Oglala Sioux Tribe call home. Nearly 67 percent of its residents live in poverty, compared to the national average of 13 percent. Nearly one-third of the people living on the reservation are unemployed. The median income of households and families on the Pine Ridge Reservation is *S11970 under $11,000, which is less than one-third the national average for American households and families.

The Oglala Sioux Tribe had an $8,191,000 tribal priority allocation base of funding in fiscal year 1995. Under this cut, they would directly reduce the Oglala Sioux funding base to $5,996,000, a $2 million cut.

In the case of the Quileute Tribe in Washington, they would receive a cut from $547,000, to $393,000. I might mention that nearly 90 percent of the Quileute Tribe families with children under the age of 6 are living in poverty, and one out of three are unemployed.

The San Carlos Apache Tribe would receive a cut of some $1.6 million out of a $6 million tribal priority. And this is what the United States meant when we promised the San

Carlos Apache in a solemn treaty that we would legislate and act to secure their permanent prosperity.

Mr. President, let me quote the respected jurist, U.S. Supreme Court Justice Hugo Black, who addressed this Nation's treatment of American **Indians** in his dissent in the case called F.P.C. versus Tuscarora:

It may be hard for us to understand why these **Indians** cling so tenaciously to their lands and traditional tribal way of life . . . the lands of their reservation are <not> the most fertile, <nor> the landscape the most beautiful, <nor are> their homes the most splendid specimens of architecture. But this is their home — their ancestral home. There, they, their children, and their forebears were born. They, too, have their memories and their loves. . . . There may be instances in which Congress has broken faith with the **Indians**. . . . I regret that <we will> . . . break faith with this dependent people. Great nations, like great men, should keep their word.

Mr. President, we have broken our bond with these people. We have denied them the full benefits derived from their lands and resources. We have denied them authority over their own affairs. And under this bill, we would deny them the funds they desperately need to address the widespread poverty and hopelessness that are a part of everyday life on the reservation.

I reserve the remainder of my time for Senator DOMENICI.

Mr. DOMENICI.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER.

Five minutes.

Mr. DOMENICI.

I yield 3 minutes to Senator INOUYE.

Mr. INOUYE.

Mr. President, I have only a few observations to add to the other statements that have been made by the chairman of the Budget Committee and the chairman of the Committee on **Indian** Affairs.

Last evening, the chairman of the Interior Subcommittee informed the Members of this body that the policy which guided the subcommittee's action in distributing 45.6 percent of the reductions in the Interior Department's budget to the Bureau of **Indian** Affairs is one that is aimed at speeding up the process of **Indian** self-determination and self-governance by sharply reducing funds that go directly to tribal governments for the provision of basic government services for reservation citizens — services such as fire protection, law enforcement, the assurance of health and safety, and the protection of the general welfare of tribal communities.

Our colleagues will recognize that this initiative is not dissimilar from that which is being proposed in the area of welfare reform — which is the idea of moving responsibilities out of the Federal Government and placing those responsibilities closest to the people — empowering local communities to address the challenges which confront citizens at that level.

But, Mr. President, I believe we must examine carefully what is being proposed under the auspices of self-governance and self-determination, because in the context of reform, we have not and are not asking other Americans to experience a 26-percent reduction in the programs upon which they have come to rely.

Rather, we talk about cutting the budget for Federal programs by 5 to 7 percent over the next 5 to 7 years.

In stark contrast, we would tell the **Indian** people that the programs which support the very infrastructure of their governments must be reduced by 26 percent in just 1 year.

In stark contrast to the reform measures that we have been debating in recent days, we would tell the **Indian** people that we are going to shore up and protect the Federal bureaucracy that absorbs 90 cents of every dollar we appropriate for **Indian** programs and instead, we are going to drastically reduce the ability of tribal governments to address the needs of their citizens at the local level.

Mr. President, this is not a proposal that will empower tribal governments.

This is a proposal that will devastate the ability of **Indian** governments to serve the most basic needs of their citizens.

As a member of the Appropriations Committee, I understand all too well the constraints and the competing demands that are placed on each of our subcommittees and I understand the challenges with which the chairman and former chairman of the Interior Subcommittee are faced. In the last few days, representatives of the Interior Department have spread horror stories around this body about the impact on each Member's State if funds are taken from any of the six accounts we propose to use as offsets.

One Member is told that the Minerals Management Service office in Alaska will be closed. Another member is told that the wildlife refuges in his State will be closed. There is a story for every Member — and it is always that all of the Interior programs in his or her particular State will be the programs that bear the brunt of our proposed reductions.

Unfortunately, these are the kind of desperate and dishonest tactics that are employed when resources become scarce. But I would ask my colleagues, Mr. President, to examine the relative reductions to other programs in Interior, and to understand that a 26-percent cut in the programs that go

directly to the **Indian** tribal governments is a reduction of a size and proportion that we have not asked any of the other Interior programs to bear. it is a matter of simple equity that brings us to this threshold today.

Mr. President, we do have a responsibility to preserve and protect this Nation's resources, but we also have a responsibility that we, as a nation, undertook long ago — when we encouraged the **Indian** nations, by force and solemn commitments, to give us their lands. This responsibility — this trust responsibility — for **Indian** lands and resources, and to assure the survival of the **Indian** people — is no less sacred.

Mr. DASCHLE.

Mr. President, I would like to engage the distinguished chairman of the Budget Committee, Senator DOMENICI and the distinguished vice-chairman of the Committee on **Indian** Affairs, Senator INOUYE, in a colloquy on their amendments to H.R. 1977, the fiscal year 1996 Interior appropriations bill and the Earth Resources Observation System <EROS> Data Center.

Mr. DOMENICI.

Mr. President, Senator INOUYE and I would be happy to discuss the amendment with the Senator from South Dakota.

Mr. DASCHLE.

Mr. President, before discussing the EROS Data Center, I would like to take this opportunity to commend my colleague on the Budget Committee and my colleagues on the **Indian** Affairs Committee for offering their amendment to the Interior appropriations bill. I strongly support their efforts to restore $200 million to the Bureau of **Indian** Affairs tribal priority allocations account, nonrecurring programs, and other recurring programs.

The existing level of funding for the Bureau of **Indian** Affairs <BIA> and tribal programs is extremely inadequate. The objective of the BIA is to encourage and assist **Indian** people to manage their own affairs under the trust relationship to the Federal Government. To carry out this objective, the BIA is responsible for assisting **Indian** tribes in the development and implementation of effective programs for their self-sufficiency and advancement.

Historically, the BIA has never been funded at a level that meets the needs of **Indian** people. The reductions in the BIA tribal priority allocation account recommended by the Interior Appropriations Committee will have the potential to further decrease and eliminate many important programs such as tribal courts, law and order, social services, roads, and housing needs that are so important to tribal self-sufficiency.

Mr. DOMENICI.

Mr. President, I thank the Senator for his kind remarks and completely agree that the funding *S11971 contained in the fiscal year 1996 Interior appropriations bill for the BIA and tribal programs is simply inadequate.

Appendix 4

The Wall Street Journal
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Thursday, August 10, 1995

Senate Clears Natural-Resources Bill, Softening Cuts for Arts, But Not Indians

By David Rogers
Staff Reporter of The Wall Street Journal

WASHINGTON — The Senate approved a nearly $12.1 billion natural-resources bill after agreeing to soften House cuts from government funding for the arts and humanities.

The National Endowments for the Arts and Humanities would each receive $110 million for the fiscal year beginning Oct. 1 — a one-third cut from current levels, but about $10.5 million more than the House approved last month for each agency.

Moreover, the Senate would strike restrictions making the NEA funds available only when the House has passed a separate reauthorization bill. Across the political spectrum, individual Republicans showed little appetite for the House leadership's plan to terminate funding in 1997.

Adopted 92-6, the underlying bill reflects the strong influence of Western senators who won concessions for ranching, timber and mining interests even as the chamber voted to impose deep cuts on Indian-related programs. Indian Health Service funding would be effectively frozen at $1.96 billion, but the Bureau of Indian Affairs would be cut 16%, or more than $220 million below what the House has proposed.

The same give-and-take about spending priorities is seen in a larger $36.6 billion transportation bill brought to the floor last night by the Senate Appropriations Committee. To help build a reserve for education and environmental programs elsewhere in the budget, the panel goes much further

than the House in scaling back highway, transit and airport funds. In an early test, the chamber voted 68-30 to override the objections of two Pennsylvania Republicans and uphold a nearly 44% cut in mass-transit operating assistance.

Within the natural-resources bill, the cuts from Indian programs fall hardest on those accounts funding hundreds of often-small tribal governments. Again Republicans were among those protesting, and Senate Budget Committee Chairman Pete Domenici (R., N.M.) angrily complained the cut was a "glaring mistake" and threatened the "termination of Indian self-determination."

Nonetheless, on a 61-36 roll call, the Senate rejected a Domenici amendment to shift $200 million from other accounts to the Bureau of Indian Affairs. By an almost equal margin, members later killed a second attempt by his New Mexico colleague, Democratic Sen. Jeff Bingaman, to restore $26.6 million for the Office of Indian Education.

The debate was striking given Mr. Domenici's standing as one of the leading architects of the GOP drive to balance the budget. The New Mexico Republican was matched against one of his early proteges on the budget panel, Sen. Slade Gorton (R. Wash.), who chairs the appropriations subcommittee overseeing the annual natural-resource bill.

"We are distributing reductions that were forced on us," said Mr. Gorton. While reminding all sides of their enduring friendship, the two men waged a testy war of charts and conflicting numbers that seemed almost a satire of the larger budget debate.

In related action, the Senate:

— Approved a 90-day moratorium to block federal grazing-land regulations due to take effect this month.

— Amended an existing law to toughen penalties in cases of "tree-spiking" — a practice used by some

antilogging protesters in the West. The provision would make it easier for timber companies to show the economic damages needed to meet the threshold for criminal prosecution. In cases that result in serious bodily injury, the provision allows for imprisonment of up to 40 years.

— Voted to end the moratorium on government processing of "patent" applications to allow mining companies to take title of federal lands where they have staked mineral claims.

— Restored $4.5 million for Fish and Wildlife endangered-species programs and upheld funding for the release of wolves in the West and Southeast.

Appendix 5

New York Times

Sunday
Sept. 3, 1995

For Indians, Budget Cuts Put Schools in Disrepair

OGLALA, S.D., Sept. 2 (AP) - In the cramped, musty baesment of the Loneman School, Frank Rapp points at two threats to the hundreds of Oglala Sioux students who attend classes upstairs.

They are the aged boilers that strain to keep the school warm during harsh prairie winters on the Pine Ridge Indian Reservation. Dan Two Bulls, the school custodian, must trudge down the narrow concrete stairs twice a day to turn them on and off, said Mr. Rapp, the school president. "If something happens to him it might blow," he said.

America's tribal schools are crumbling because of budget cuts, inefficiency and neglect by the Federal Bureau of Indian Affairs and Congress, Mr. Rapp and other tribal school leaders say. The nation's 187 schools supported by the bureau have an estimated backlog of $650 million to $800 million in needed repairs.

Across reservations, thousands of children are crammed into dilapidated classrooms with inadequate ventilation, plumbing and fire-escape routes, officials say. Many school buildings have not met fire or safety codes for years. Loneman was condemned in 1991.

John Tippeconic, the director of the bureau's Office of Indian Education Programs, calls the crumbling schools "a major, major problem."

"In some cases we are probably putting some kids in danger, in unsafe conditions," he said.

At Little Wound School In Kyle, a girl lost several fingers after they were crushed by a metal door the school did not have the money to replace.

While officials of the Fond Du Lac Chippewa tribe in northern Minnesota wait for a new building, 200 students are taught in trailers and a converted storage building.

Loneman's plumbing dumped untreated sewage into a creek until officials complained to the Environmental Protection Agency.

In treaties with the Sioux and other tribes, the Federal Government promised to educate American Indian children. The Bureau of Indian Affairs is required to finance tribal schools at the per-student average for their state, but the rule is not giving the bureau enough money for schools, Mr. Tippeconic says.

An advisory committee to the Office of Indian Education Programs concluded in 1991 that "schools are grossly underfunded." That year, the bureau spent an average of $2,538 a student. The average for 1994-95 fell to $2,515.

In South Dakota, off-reservation public schools spent an average of $4,045 a student for 1994-95. Loneman received $2,907 a student last year, Mr. Rapp said.

Last year, the bureau's schools received 84 percent of the money they requested. This year, the Senate passed a budget that cut $31 million for the schools, including $10 million for school repair and $13.6 million for new construction.

About 47,000 students attended the bureau's schools last year, and by 1996 that number could rise to 50,000, Mr. Tippeconic said.

Bureau officials estimate that enrollment in Indian schools in the Dakotas and Nebraska will grow by 50 percent, or about 12,500 students, within five years. Yet

construction plans call for buildings to accommodate only 560 more students. Little Wound School serves about 900 students in facilities designed for 650.

In the hot months at the beginning and end of each school year, the students endure stifling schoolrooms.

"They get sluggish; they won't learn," said the facilities manager, Jim Whirlwind Horse. "But you see smiles on their faces because they don't know any different. They think everywhere is like this."

Appendix 6

INDIAN GAMING REGULATORY ACT

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE NEED FOR
AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT

MAY 17, 1994
WASHINGTON, DC

PART 3

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF ADA E. DEER, ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR,

Good Afternoon Mr. Chairman and members of the Committee, I am pleased to be here with you today to share with you the experiences of the Department of the Interior in administering provisions of the Indian Gaming Regulatory Act (IGRA). I am accompanied by Mr. John Duffy, Counselor to the Secretary, who will present the Department's testimony.

I do however, want to make some general comments on Indian gaming before Mr. Duffy offers the Department's testimony. The President's remarks in his historical meeting with the tribes, the follow-up Listening Conference and my 10 months as Assistant Secretary all make clear that tribe-owned gaming is an important economic development activity for Indian tribes.

In the States where Indian tribes and the States have worked together on a government-to-government basis, the objectives of the IGRA have begun to materialize to the benefit of both governments. Tribes have used gaming revenues to provide better governmental services for tribal members, better health care, higher quality education and employment. In several non-Indian communities tribal gaming has proven to be a catalyst for their revitalization. In those States that have refused to negotiate with tribes, the tribes' efforts at achieving economic stability and self-sufficiency have been effectively frustrated. Moreover, in some highly publicized conflicts, protracted and costly liti-

gation has resulted creating a major disincentive for tribes and States to work cooperatively.

Second, while at times tribes may feel overwhelmed and frustrated, I believe they have shown great determination, hope, and in most cases, willingness to work with the States to reach amicable resolutions.

Although the implementation of the IGRA has sometimes been contentious and difficult, overall our experience has been positive. To date we have approved 107 compacts, 12 amendments representing agreements between 90 tribes and 19 states.

In closing I want to say that we will continue to support Indian gaming as an important means of economic development. And, as Assistant Secretary, I am prepared to work with the tribes in their efforts to provide direction and leadership on this critical issue.

Thank you.

Appendix 7

INDIAN GAMING REGULATORY ACT

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE NEED FOR
AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT

MAY 17, 1994
WASHINGTON, DC

PART 3

Deloitte & Touche

A Historical Review of Gaming in the United States

April 26, 1994

Deloitte Touche
Tohmatsu
International

NIGA

National Indian Gaming Association

Chairman
Rick Hill
Oneida Tribe of Indians

Vice Chairman
Daniel Tucker
Sycuan Band of Mission Indians

Treasurer
Nathan Small
Shoshone Bannock Tribe

Secretary
Jake Viarrial
Pojoaque Pueblo

904 Pennsylvania Avenue, SE
Washington, DC 20003
(202) 546-7711 • Fax (202) 546-1755

Executive Director
S. Timothy Wapato
Colville Confederated Tribes

Public Relations Director
A. Gay Kingman
Cheyenne River Sioux

Section A

History of U.S. Gaming

HISTORY OF US GAMING

Origins of U.S. Gaming

The United States is in what has been referred to as the "third wave" of legalized gaming, in that this is the third time that gaming, in one form or another, is available virtually everywhere in America. The first wave of gaming began in the colonial era and lasted through the Civil War. The second wave began after the Civil War and lasted through the early twentieth century when most forms of gaming throughout the U. S. were banned. The third wave began in 1964, with the passage of legislation legalizing a lottery in New Hampshire.

Lotteries dominated the first wave and were used to help finance the colonization of America. As such colonization took place, the popularity of the lotteries increased and they were used to finance projects too massive for traditional government or private financing sources. Institutes of higher learning such as Harvard and Princeton were financed in part from tax proceeds generated by lotteries.

The nation's first lotteries were considered respectable and not a form of gaming, but rather, a voluntary form of tax collection patronized by the most respectable citizens. By 1831, lotteries were sponsored by eight states and wagers exceeded $66 million, five times the annual federal budget. By the time the Civil War started, scandals and swindles plagued the lotteries and a wave of morality swept the nation. This soon led to the abolition of lotteries, and the first wave of legalized gaming receded.

The second wave of legalized gaming followed the Civil War. Lotteries made a comeback and other forms of gaming proliferated. This comeback was the strongest in the Reconstructed South as a means of dealing with the extreme financial difficulties that resulted from the war. Gaming also

thrived in the frontier cities of the West and in most major urban areas.

During the 1840s and 1850s, the gold and silver strikes in California and Nevada caused an influx of miners and others into those territories. Gaming became an integral part of the boomtown atmosphere. Gaming also thrived in the cities of San Francisco, Kansas City and Denver, all of which were known as gaming capitals in the 1850s. During this period, anti-gaming legislation was passed but was not effective and only served to drive gaming underground where it was tolerated if not supported by law enforcement officials.

However, the second wave did not persist, and by 1910, the year Nevada banned casinos, legal gaming was virtually non-existent in the U.S. By the 1930's casinos had returned to Nevada and horse race wagering had returned to twenty-one states. Lotteries were not legalized again until 1964 when such activity was legalized in New Hampshire, and, according to some experts, this ushered in the third wave of legalized gaming in America.

Despite a weak economy the gaming industry in the U.S. has exhibited an impressive growth rate. The morality argument has lessened as governments and churches become big players. The industry has become a huge economic and social force. Players are demanding faster and easier games. This fundamental value shift is currently changing the form gaming takes across the country. Gaming is legal in one form or another in every state (including the District of Columbia) except Utah and Hawaii. Land based casino gaming (including casinos on Indian Reservations) is offered in 20 states. In addition, Indian tribes in Florida and New Mexico operate electronic games such as video poker without compacts because the states have refused to negotiate with the tribes. Excursion boat (riverboat gaming) is legal in Illinois, Indiana, Iowa, Louisiana, Missouri, and Mississippi. Every other state with a major waterway, or

lake is considering riverboat gaming. 38 states (including Washington D.C.) permit lotteries and remaining jurisdictions where gaming is legal offer various forms of parimutuel wagering.

Section B

Revenue Analysis by Gaming Industry Segment

REVENUE ANALYSIS BY GAMING INDUSTRY SEGMENT

1992 gaming revenues or win exceeded $29.9 billion a volume that would rank 19th in the Forbes Sales 500, ahead of American Express ($26.96 billion) and behind Boeing ($30.184 billion). Lotteries and casinos dominate the US legal gaming industry accounting for approximately 38% and 34% respectively, of total 1992 gaming revenues. Pari-mutuels are next in revenue market share at approximately 12%. Indian Reservation gaming accounts for 5% of revenue market share. Charitable games, bingo, card rooms, and legal bookmaking account for the remaining 11% of market share (see exhibit B).

Consumer preference for higher priced lottery games, continued interest in OTB and slot machines over lower priced alternatives such as race tracks and table games changed the composition of gross gaming revenue. This also increased the average consumer price of gaming from 8.77% of handle in 1991 to 9.07%.

Gross gaming revenue comprised .592% of US personal income versus .552% in 1991. Consumer expenditures (losses) on legal gaming were 6 times greater than the $4.9 billion Americans spent on box office receipts.

Indian Reservation Gaming

Class III Indian Reservation gaming experienced significant growth in revenues. Revenues totaled $1.07 billion, with an estimated (256%) or $769 million increase since 1991. When combined with Class II revenues, mostly bingo, the gross gaming revenue totaled $1.5 billion producing an overall gain in revenues of 108%, or $779 million. Exhibit C clearly illustrates the growth in Indian gaming since the passage of the Indian Gaming Regulatory Act (IGRA) in 1988. Although Indian gaming revenues are increasing at a tremendous pace, Indian gaming revenues are still a small

percentage of total gaming revenues. Exhibits A & B illustrate market shares for 1991 and 1992. Exhibit D clearly shows that the size of Indian gaming revenues is still small as compared to total gaming revenues (comprising 5% of total revenues).

There has been some confusion about the actual scale of Indian Gaming. A widely talked about figure of $6 billion was publicized. "Gaming and Wagering Business" magazine attributes this projection to a possible misunderstanding regarding gambling terminology. Indian casinos win 18% of drop. Therefore, a $6 billion drop would equate to a $1.08 billion win which is in line with the original estimate.

Casinos

Casinos won $11.2 billion an increase of $1.1 billion since 1991. Class III Indian Gaming the majority which is generated by casino games comprised $1.1 billion of the total casino revenues. However, lotteries still comprised the largest share (38.3%) of the pie but not by a significant amount.

Slot machines in Nevada and New Jersey, cruise ships, riverboats and land based casinos were all strong performers. The tend in the mix of casino gaming is moving away from table games to higher margin slot machines. Slot machines represented 47% of total Nevada and New Jersey casino gaming revenues in 1982 versus 65% or $5.83 billion in 1992.

Lotteries

There have been many changes in the lottery market. It is now comprised of three primary venues: traditional state number games, instant games, and video lottery terminals. Since its reintroduction into the US in 1964, the state lottery has been the engine that has powered the resurgence of legal gaming:

- 38 states including Washington DC permit state lotteries.
- Lotteries are available to more than 80% of the US population.
- Thus far, lotteries have been economically successful and relatively free of scandal popularizing and sanitizing the game in general.

Aggregate gross revenues from lotteries reached $11.5 billion, a record 12% increase, a $1.2 billion increase from 1991.

Texas, Georgia, and Nebraska began lotteries in 1992-3. The successful start of lottery operation in Texas generated a first year handle which topped $1 billion.

The traditional lottery market is approaching maturity. Lotteries are diversifying their product lines. The continued success is highly dependent upon aggressively marketing lottery games and stimulating the market by diversifying their product lines.

Video poker and keno will play a key role in the future of lotteries. Video lottery revenues were up 99% or $120.4 million in 1992.

Non-Bingo charitable games

Non-bingo charitable games include pulltabs, punchboards, raffles, low-stakes blackjack and other card and dice

games. Gross revenues increased by 4.5% or $55.6 million to a total of $1.3 billion.

Bingo

Gross revenues from non-Indian bingo halls increased 2.2% to $1.09 billion. This revenue figure is an estimated figure based on the reported revenues. Each state has different laws regarding the reporting requirements and therefore it is probable that there are instances where revenues have not been reported.

Industry experts believe this market has matured. However, bingo players stay extremely loyal to their game.

Pari-Mutuels

Pari-mutuel wagering is generally considered to include on-track, off-track, and inter-track betting on horse racing, dog racing and Jai-alai. Currently, some form of pari-mutuel wagering is authorized in all the U.S. states except Alaska, Georgia, Hawaii, North Carolina, South Carolina, Utah, and the District of Columbia. All of the states with pari-mutuel wagering have some form of horse racing, approximately 17 states have greyhound racing, and Jai-alai wagering is in operation in just three states, Florida, Rhode Island and Connecticut. Pari-mutuel wagering accounted for 12% of total US gaming revenues in 1992. Gross pari-mutuel revenue rose slightly (.4%) by $16.1 million to $3.7 billion.

Major innovations in the industry have been off-track betting, inter track betting and simulcasting races to other venues, such as casinos. Off-track horse revenues increased by 12.8% to $110.2 M. Off-track betting comprises 33% of the industry's revenues and the share continues to rise. These innovations have made pari-mutuel wagering more accessible to bettors, however several studies have shown that the main effect has been to increase the amount wagered by existing patrons versus attracting new attendees.

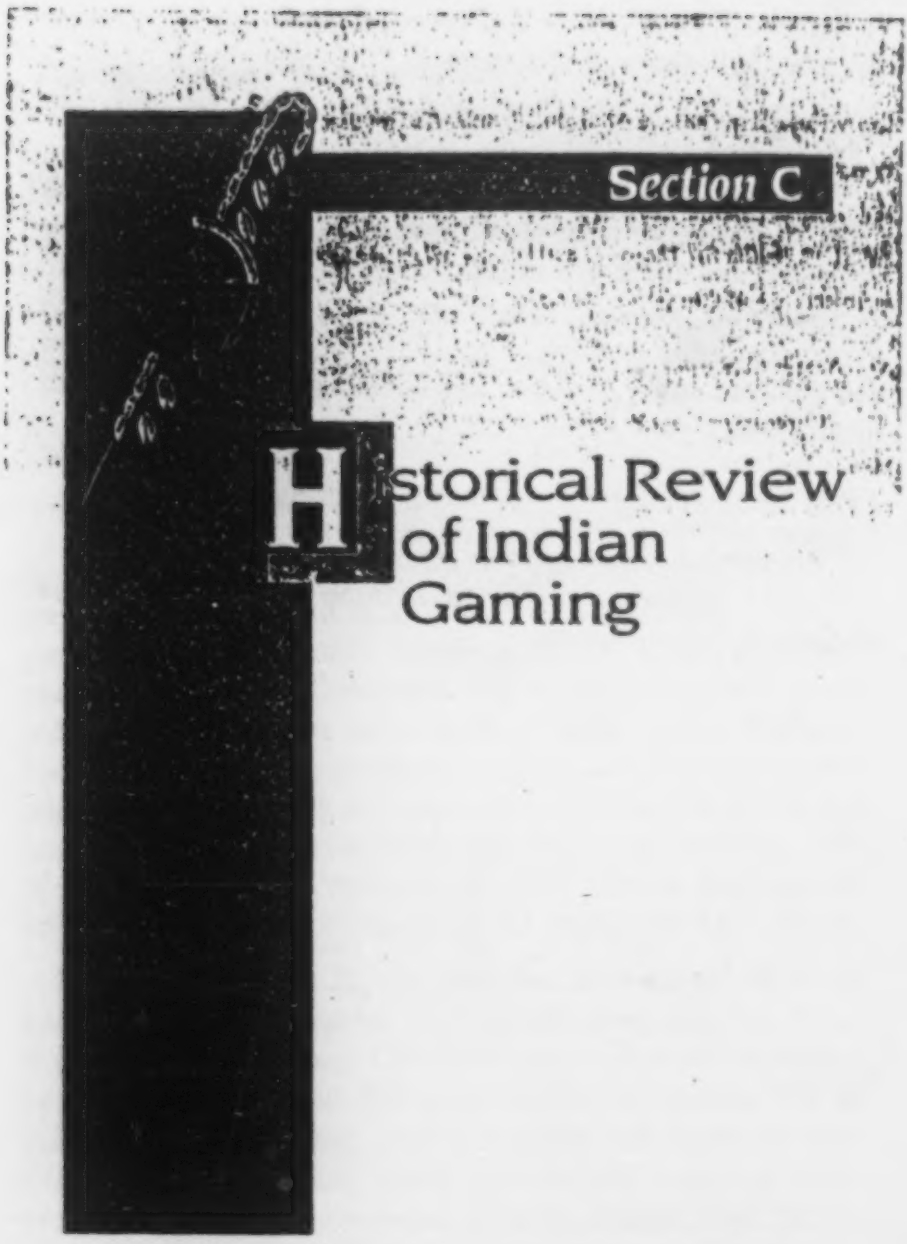
The pari-mutuel industry has been losing its share to other gaming industry segments and experienced low growth in total revenues from 1982-1992 (exhibit E). The pari-mutuel industry will require new and creative marketing approaches to hold their share of the market.

Non-Nevada Cardrooms

Cardroom revenues increased slightly in 1992, by less than $1.7 million, to $661 million. Most of these operations are small but there are many. There are approximately 300 in California alone. However, revenues in those California cardrooms have stabilized in 1992. Poker-like versions of pai-gow and super pan-nine and similar games are the major attractions.

Legal Bookmaking

This market share appears to have matured. Sports bets fell $9.98 million in 1992 to a three year low of $97.4 million.


Section C
Historical Review of Indian Gaming

HISTORICAL REVIEW OF INDIAN GAMING

Introduction

American Indian Nations embrace a distinct culture, language and spirit. Casino gaming has been referred to many as the "return of the buffalo". The buffalo was used by the American Indian people for total subsistence, food, shelter, clothing, children's games, and trading.

Gaming has replaced the buffalo as the mechanism used by American Indian people for survival. Today, the proceeds from gaming are used by Indian Nations for subsistence, cultural preservation, and to replenish impoverished economies. Not surprisingly, the spread of Indian Gaming has spurred controversy. As Indian casinos became more successful, competitors have lodged charges of unfair advantages and organized crime infiltration. During a 1992 Senate hearing on Indian Gaming, Paul Maloney, senior counsel at the Department of Justice, testified that a special investigation uncovered no evidence of organized crime infiltrating Indian gaming. In all cases of crime or robbery, Tribal governments have brought the crime to justice. Opponents accuse Indians of exploitation; that they are using gaming as a means to provide short-term financial growth and enormous benefits. Proponents refer to the intent of IGRA when allegations of exploitation are raised.

The primary intent of IGRA is to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self sufficiency, and strong tribal governments". Under IGRA, all revenues from gaming operations are required to be used solely for governmental or charitable purposes. Gaming revenues are used to build infrastructure, schools, hospitals, roads, sewers, and water systems and to fund health care and education.

Many reservations do not have sufficient resources and are located in undesirable regions that cannot support devel-

opment. These tribes have become dependent on federal aid, as attempts at economic development have failed prior to the advent of Indian gaming.

Government aid provided to Indians often result in benefiting local communities. This is due to the fact that there is a scarcity of Indian businesses and high unemployment, sometimes as high as 80%. A significant portion of the federal dollars are therefore spent outside the reservation.

The lack of a vital economy on reservations makes it nearly impossible to improve tribal conditions. This hopeless environment and constant struggle help to explain the high incidence of alcoholism and suicide, and the lack of adequate health care in many tribal communities. According to the 1990 Census, the poorest counties in the United States are located on Indian Reservations. There are also 3,200 counties in the United States. Of the Poorest 1% (32 counties), 7 are located on Sioux reservations in South and North Dakota. In addition, several other Indian Reservations in various counties in the United States were also listed amongst the 32 poorest counties.

More recently, gaming has enabled a few tribes to improve their situations considerably. The profits are used to build road and water systems and healthcare centers, provide job training scholarships and both home and business loans to tribal members. More tribes will benefit from gaming with the proliferation of Indian gaming operations. Currently, there are 547 tribes of which only 79 (14.4%) have Class III gaming.

Legislative and Regulatory Issues

Indian Tribes are sovereign governments. They have existed as sovereign governments long before Europeans settled in North America. Treaties signed with settlers in exchange for land guaranteed the tribes continued ability to be recognized and treated as sovereign entities. However,

historically state governments have been hostile in recognizing Indian Tribes as independent entities.

Under the constitution of the United States, the federal government is obliged to protect tribes from states, who have often coveted the Indian's lands and assets, and sought to impose power over Indian tribes and people.

Several landmark court cases have confirmed this recognition of Indian sovereignty. These court cases include, *Cherokee vs. Georgia, 1831,* and *California v. Cabazon, 1987.* The Indian Gaming Regulatory Act (IGRA), passed by Congress in 1988, affirms that tribes have the power to conduct gaming on Indian lands subject to tribal/state jurisdiction.

Indian Gaming was conducted on many reservations throughout the US prior to the passage of Indian Gaming Regulatory Act (IGRA). This legislation was passed in response to a 1987 federal court decision "California versus Cabazon" which stated that tribes could engage in forms of gambling that were not expressly prohibited by the state in which the tribe is located. The "California versus Cabazon" case and US supreme court finalized the distinction in which the court applied a criminal/prohibitory — civil/regulatory distinction. In other words, if a state regulates gaming, in any form, then gaming falls under civil law for which Indian nations cannot be prosecuted and the state is obligated under federal law to enter into compact negotiations with the tribe. If a form of gambling sought by a tribe is expressly prohibited by the state under criminal law, then the state can refuse negotiations for particular games on that basis. The Cabazon case solidified issues surrounding gaming on tribal lands which had previously been questioned.

The purpose of IGRA was to create a balance between the tribe's right to conduct gaming on their reservations and the public interests of the states in which the tribes are

located. IGRA became effective on October 17, 1988. The goals of the act include tribal economic development, self-sufficiency and a strong tribal government. The act provides a framework by which the games are conducted to protect both the tribes and the state. The act created three classes of gaming and allocated regulatory jurisdiction over each class among tribal, federal, and state sovereigns.

- Class I — includes social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals and is subject to exclusive tribal regulatory jurisdiction.

- Class II — includes all forms of bingo and other games similar to bingo, such as pull-tabs and punch-boards (electronic or non-electronic), provided these are played in the same location as bingo games. Class II also refers to non-banking games that either expressly allowed or not expressly prohibited by state law and banking card games in existence in the specified states of Michigan, North Dakota, South Dakota, Montana, and Washington State on or before May 1, 1988. Class II gaming is subject to tribal regulatory jurisdiction, with extensive oversight by the National Indian Gaming Commission (NIGC).

- Class III — includes all forms of gaming that are not Class I or II, including slots, casino games, banking card games, horse and dog racing, pari-mutuel wagering and jai-alai. Class III gaming is lawful on Indian lands only if the gaming has been authorized by a tribal ordinance approved by the chairperson of the NIGC and such gaming is permitted by the state for any purpose by any person, organization, or entity, and is conducted in conformance with a tribal-state compact entered into by the tribe and the state that is in effect. The tribal-state compact entered into by the tribe was proposed by the Nevada congressional delegation on

behalf of the states. The jurisdiction over class III gaming is left to the tribal-state compact negotiation.

The sovereignty of American Indian tribes was limited by IGRA which required a tribe to negotiate a compact with the state. Under IGRA, a tribe must request a state to enter into compact negotiations. Once a request is made, the state has an obligation to negotiate in "good faith" to enter into a compact. The compact must also be approved by the Secretary of the Interior. Jurisdiction is provided to the federal district court concerning the following:

- Any cause of action by a tribe arising from a state's failure to conduct negotiations in good faith.
- An action by a state or a tribe to enjoin any class III activity conducted in violation of the compact.
- Any cause of action initiated by the Secretary of the Interior to enforce the Secretary's authority under IGRA to enforce mediation procedures.

Today, there have been law suits because some states have failed to live up to IGRA and negotiate in "good faith" with tribes. There have been a number of landmark cases prompted by the proliferation of Indian Gaming. These cases have clarified gaming issues that IGRA addressed. Some of the major cases are summarized below:

Mashantucket Pequot Tribe versus
State of Connecticut, 1991

This decision involved the first interpretation of IGRA. The tribe filed suit in accordance with IGRA requiring the state of Connecticut to negotiate terms for operating games of chance on its reservation. The state agreed that "its limited authorization of the conduct of Las Vegas nights by nonprofit organizations does not amount to a general allowance of such (casino-style) gaming as the tribe would institute, and further that such gaming activity is contrary to

the State's public policy." The court determined that the issue was whether the form of gaming sought by the tribe violated the State's public policy.

The court reiterated what was stated in the Cabazon case. "If the intent of state law is generally to prohibit certain conduct, it falls within the areas of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory."

The court reasoned that since the state permits certain casino style games at charity events, the Mashantuckets use was within the meaning of IGRA, and not against public policy of the state. The court held that the state was required to enter into a compact with the Pequot tribe and that the games conducted in Las Vegas nights were subject to negotiations as were the rules of conduct for these games.

Lac Du Flambeau Band of Lake Superior Chippewa Indians Versus Wisconsin, 1991

In this case the tribe filed suit against the state under IGRA because the state failed to negotiate in good faith for a gaming compact. The court concluded that "the state is required to negotiate with the plaintiffs over the inclusion in a tribal state compact of any activity that includes the element of prize, chance, and consideration and that is not prohibited expressly by the Wisconsin Constitution. The state is required to negotiate casino games such as video, slot machines, and blackjack with the tribes because the activities are permitted under Wisconsin law within the meaning of IGRA."

The Cabazon case finalized the legal distinction between criminal/prohibitory and civil/regulatory. In this case it was determined that Wisconsin's gaming structure was regulatory in nature. The central issue in this case was whether the state "expressly permits" the type of gaming which the tribe

was seeking to conduct. The Federal court said that the "inquiry" is whether Wisconsin *prohibits* those particular gaming activities. It does not."

Seminole Tribe of Florida vs. Lawton Chiles, Governor of the State of Florida, 1994

This case was first filed in the Southern District of Florida on September 19, 1991. The Seminole Tribe brought suit against Lawton Chiles, Governor of Florida, to remediate the alleged failure of the State of Florida to conduct good faith negotiations for the tribe to establish gaming operations on their land. The State of Florida dismissed the claims on two grounds, 1) Gaming activities proposed by the Seminole Tribe are not conducted in the State of Florida. 2) Pursuant to the Eleventh Amendment, Congress does not have the constitutional power to enforce "good faith" requirement of the compact process by explicitly providing the Tribe a judicial remedy against the state.

On June 18, 1992, the final ruling sided with the Seminole tribe. The Florida Federal Judge ruled that the Eleventh Amendment was not a justifiable defense by the states. The Tribe's central argument against Florida's rebuttal was that IGRA abrogated the State's immunity when it enacted IGRA. This ruling was important in that it found that Congress has the power to abrogate State immunity. Subsequently, interlocutory appeal ensued. The appeal resulted in a finding that Congress did not have the power to abrogate state immunity, but the tribes should have remedy in "bad faith" cases. Therefore, the Secretary of the Interior was directed to implement procedures for the tribes in lieu of a compact with the states.

The State's Use of the 10th and 11th Amendments

Congress included a provision in IGRA that the states and tribes negotiate a compact for those games being

considered by the tribe. The states have responded to IGRA by using the 10th and 11th amendments to block the establishment of Indian Gaming Facilities. The state's basic strategy is to refuse to negotiate all or certain kinds of Class III games (such as slot machines, card games, pari-mutuel racing etc.). If a tribe feels the state has failed to negotiate in good faith, IGRA says that the tribe can sue the state for failure to negotiate.

The states have been using the 10th amendment as a defense because it reads the powers not delegated to the federal government by the constitution are reserved for individual state governments. The state therefore cannot be compelled by the federal government to act on anything that is not stated in the constitution. This is disputed by the tribes.

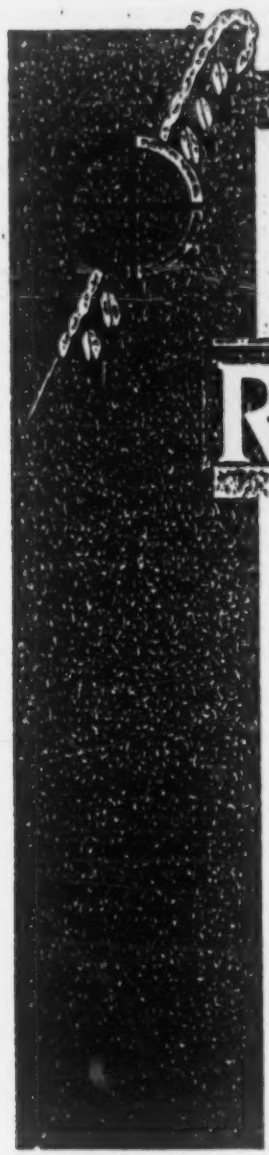
States have been using the 11th amendment as a defense when tribes file suit against them for allegedly negotiating in bad faith. The 11th amendment says that a state cannot be sued by individuals based on federal legislation, that a state has immunity from such lawsuits unless congress makes it clear that immunity does not apply. One response according to Jerry Strauss, an attorney representative for several tribes is "Congress has the power to abrogate state immunity and nobody disputes that Congress intended to do that when writing IGRA."

When the tribe seeks an appeal by taking the state to court the state dismisses the suit on the grounds of sovereign immunity as defined in the 11th amendment. The amendment bars suit by individuals against a state to enforce rights conferred by federal legislation, in the absence of clear congressional intent to authorize such suits.

Recent Agreements

In 1993, the Mashantucket Pequots tribe agreed to pay the state of Connecticut 25% of slot machine revenue in return for a monopoly on slots.

On April 25, 1994 Governor Weicker Jr. settled the Mohegan's land claims in exchange for permission to operate a casino. In this new agreement, the Pequots and the Mohegans will share the gaming business. The new compact extends to all casino games in return for $160 million in payments from the tribes. This agreement could be dissolved if the legislature legalizes not just slot machines, but any gambling off the reservation. If the agreement is dissolved the state would be forfeiting the tribes' millions. This agreement raised the barrier to any gaming company other than Indians to operate casinos in Connecticut.



Section D

Review of Economic Impact Studies

REVIEW OF ECONOMIC IMPACT STUDIES

Introduction

There have been several studies which show the positive effects of Indian Gaming on reservations and the economy. The Indian Casinos stimulate economic growth due to direct and indirect impacts. For example, direct impacts are the wages paid to employees as well as the purchases from suppliers. For purposes of illustration, let us review the economic impact of the wages paid to employees of the casino. The casino employees have the means to consume and they will therefore spend a portion of their payroll on goods and services both on and off the reservation. The producers of these goods now have extra incomes and they will in turn spend a portion of their income. This process will continue. Thus an endless chain of secondary consumption and respending is set in motion by the primary investment (in this example the casino employees' wages.) This is what is referred to as the multiplier effect. Spending stimulates additional or induced spending in addition to employment. There are other positive economic effects such as decrease in unemployment and public assistance expenditures.

Although different methodologies have been used there are a number of common findings which are revealed in a majority of the studies:

- Increases in tribal revenues to support Indian government services, economic development, and self-sufficiency
- Increases in employment (Indian and non-Indian)
- Reduction in public assistance expenditures
- Creation of induced spending and induced employment
- Increases in the number of out-of-state visitors which stimulates visitor spending
- Increases in tax revenues

- Decrease in crime rates.

These studies also prove that the Gaming operations not only benefit the Indian community but the surrounding regions as well. As will be explained in several of the studies, more often than not the casinos employ a higher percentage of Non-Indian employees. An estimated 78% of casino gaming employees are non-Indians.

The following studies have been reviewed and the key findings will be highlighted in this report:

- The Economic Impact of Sycuan Gaming Center on East San Diego County — prepared by McGladrey & Pullen CPA's and Consultants
- Economic Benefits of Tribal Gaming in Minnesota — prepared by KPMG Peat Marwick
- The Economic and Fiscal Impact of American Indian Gaming on the Government of the State of Wisconsin — prepared by James Murray, Ph.D.
- The Economic and Fiscal Impact of Indian Reservation Gaming in New Mexico — prepared by Center for Applied Research
- The Economic and Social Effects of Indian-Owned Gaming Enterprises in Michigan — prepared by University Associates
- The Economic Impacts of Foxwoods High Stakes Bingo & Casino on New London County and surrounding areas — prepared by Arthur Wright and Associates

Key Findings

The Economic Impact of the Sycuan Gaming Center on East San Diego County

Although there has been a recession in San Diego County, the Sycuan Gaming Center has experienced tre-

mendous growth. It has impacted the local economy by creating more than 2,100 jobs in 1993 and generated total spending of nearly $70 Million.

The population of the Sycuan is only 100 people. The tribe has operated a gaming operation since 1983 starting with bingo, then adding card games, OTB and video pull tab machines. In 1990 a 67,000 square foot Las Vegas style casino was built for $3.5 million and then expanded in 1992 for $500 thousand.

There have been positive benefits to the tribe such as no reliance on public assistance for the last six years. The tribe has improved the infrastructure and also invested in non-gaming related ventures to gain long-term economic self-sufficiency. Proceeds from the gaming center have funded the following tribal operations:

- Medical and dental clinic for tribal members and all employees including Non-Indians
- Pharmacy
- Day Care Center
- Chapel
- Ambulance Service
- Library
- Police department
- Fire Department
- Automotive Shop
- Human Resources department
- Tribal administrative offices

Gaming revenues have continued to increase significantly. Gaming revenues include revenues from bingo, pull tabs, card games, off-track betting, and restaurant and concessions. In 1990, the expansion of the facility allowed for the inclusion of card games, which is the largest source of

gaming revenues (53.3% of total revenues). Total gaming revenues increased 28% from $34.0 million in 1992 to an estimated $43.6 million in 1993.

The largest expenditures for the gaming operation are operating expenses which totaled $22.1 million in 1993 and the payroll and payroll taxes which totaled $9.7 million in 1993. Other capital expenditures related to the gaming center totaled $2.2 million. Total expenditures in 1993 were $34.0 million.

The revenues less the total expenditures totaled $5.4 million in 1992 and $9.6 million in 1993. These amounts are referred to as "Proceeds" and IGRA requires that proceeds be used for the general welfare of tribal members, promoting economic development, funding tribal government and local charitable donations.

The following table summarizes the tribes use of proceeds:

Use of Proceeds	1992	1993
Tribal Government	$ 651,000	$1,089,000
Education and Human Services	3,048,000	3,153,000
Per Capita and Direct Services	804,000	930,000
Capital expenses and investments	929,000	4,428,000
Total	$5,432,000	$9,600,000

According to the San Diego Business Journal, the Sycuan Band is the second largest employer in East San Diego County with 851 employees in 1993. It is interesting to note that 90% of those employed by the Gaming Center and tribal operation are non-Indian.

The economic impact from the Sycuan Gaming Center and Tribal Operations was $38.6 million for direct expenditures and $31.3 million for induced expenditures resulting in a total economic impact of $69.9 million.

Economic Benefits of Tribal Gaming in Minnesota

The state of Minnesota entered into video games of chance compacts with 11 tribes between October 20, 1989 and the spring of 1991. The state also entered into blackjack compacts with 11 tribes between May and August of 1991.

Tribal gaming has resulted in an estimated total of 37,575 jobs from both direct and induced employment. Of this total 9,975 persons are employed directly by the tribal gaming facility. Indians and non-Indians benefit from the gaming facility. Indians hold 27% of the jobs and non-Indians hold 73% of the new jobs. The tribal gaming employment was compared to other employers and it ranked as one of the largest employers in Minnesota. According to a study conducted by the Minnesota Planning Agency 20,000 indirect employment jobs are being supported by tribal gaming and 7,600 could be supported by tourism expenditures.

The state has also reduced Public Assistance spending. The number of Aid to Families with Dependent Children (AFDC) recipients has decreased by 14% between 1987 and 1992 in 8 non-urban counties with tribal gaming whereas the statewide number of recipients increased 17% for the same period.

Gaming revenues increased 173% from 1991 to 1992 totaling $390 million. Video games comprised the largest share (74.7%) of total revenues.

The largest expenditures were payroll totaling $116.9 million and operations-related totaling $106 million. The revenue less the operating expenses yielded available proceeds of $167 million. In accordance with IGRA the tribe utilized proceeds as summarized below.

Use of Proceeds	1992
Direct services	$39.5 million
Human services and education	4 million
Charitable contributions	.8 million
General Gov. and trusts	13.4 million
Management fees	8.3 million
Capital expenditure enterprise	32 million
Capital expenditure infrastructure	6.5 million
Housing	17.3 million
Investments and unallocated	45.2 million
Total	$167 million

The Economic Impact of American Indian Gaming on the Government of the State of Wisconsin

There are currently 15 Class III gaming facilities owned by American Indian tribes in the State of Wisconsin. This study released in 1993 showed the dramatic benefits that Indian Gaming has had on the state of Wisconsin. The benefits to the state of Wisconsin from welfare savings, gas taxes, income taxes and sales taxes were estimated at $51.7 million. These savings are summarized as follows:

Savings	1992
Welfare Savings	$2.2 million
Gas Taxes	$14.2 million
Sales Taxes	$17.3 million
Income Taxes	$18 million
Total	$51.7 million

These estimates were derived by reviewing current employment data and historical welfare and unemployment statistics. An estimated 30,000 jobs are directly or indirectly supported by Indian Gaming Facilities. Of this total, 4,500 persons were employed directly by the gaming facility. Approximately, 5,500 jobs were created in construction, supplier firms, and from non-gaming visitor spending. The remaining 20,000 jobs were indirectly supported by the gaming facilities. The estimated tax liability as highlighted above is $18 million.

The study also reviewed the reduction in welfare benefit costs resulting from the employment of former welfare recipients by the gaming facilities. A survey of employees of the American Indian gaming facilities revealed that 820 of those employed in 1992 had been welfare recipients prior to joining the operation. Using the average payments it was estimated that a total of $1.6 million in payments was saved by the state and approximately $1.4 million was saved by the federal government.

There were also approximately 205 Indians receiving Relief for Needy Indian Person (RNIP) benefits prior to joining the gaming operation. The average RNIP benefit in 1992 was $2,676 resulting in a total savings of $548,580 in this program because of direct gaming employment.

As stated in the table above, there was also significant tax revenue generated from sales associated with the operation of the gaming facility. Total sales tax and gas tax collections from sales associated with facility exceeded $32 million in 1992.

This study also reviewed crime rates and found that crime rates were actually lower in those communities with gaming facilities. The total number of offenses in rural counties increased by approximately 11 percent, the increase in casino counties was less than 5% while the increase in non-

casino rural counties was over 12%. These statistics do not support the contention that costs are being incurred in casino counties due to higher crime rates associated with Indian gaming facilities. Moreover, this does not reflect the thousands of enforcement hours provided at no federal or state costs by the tribally funded officers and departments.

The Economic and Fiscal Impact of Indian Reservation Gaming in New Mexico

This study reviewed the operations of 10 tribes which comprise all Indian gaming enterprises in New Mexico.

The study focused on three dimensions to determine the economic impact of gaming.

- The wage and salary income of employees at all reservation gaming enterprises was identified. A portion (60%) of the wage and salary income of gaming operation employee was assumed to be expended in the state economy.

- The value of expenditures that are made by tribal gaming operations for supplies, utilities, equipment, etc. was identified.

- The tourism expenditures related to gaming were also determined. The tourism expenditure patterns were primarily based on the All Indian Pueblo Council Report, "The Economic and Fiscal Impact of American Indian Reservations in New Mexico." (October 10, 1993)

The principal source of data was a tribe by tribe survey which described number of jobs, salary payments, etc. Economic and taxation assumptions were taken from economic models developed for the All Indian Pueblo Council by the Center for Applied Research.

Economic Impact attributed to Indian Gaming Operation Employees

The Indian Reservation gaming operation directly supports 597 jobs and accounts for induced employment of 176 job holders state wide. This results in a total salary and wage income impact of $6.9 million.

Economic Impacts attributed to Tribal Government Expenditures

The expenditures for gaming operations supplies, goods and services created 879 jobs state-wide and $20.1 million in wage and salary income.

Economic Impacts of tourism attributed to Indian Reservation Gaming

The tourist expenditures account of 3,332 jobs and $65.6 million salary and wage income statewide.

The following table summarizes the economic impacts discussed above:

Basis of Impact	Amount
Total Income - Gaming Operation Employees	$ 6,935,509
Total Income - Expenditures for Operations	$20,149,451
Total Income - Tourism Expenditures	$38,530,608
Total	$65,615,568

Fiscal Impacts of Indian Gaming

The key assumption forming the basis for tribal government expenditures is that gaming enterprises obtain at least 90% of the goods, services and supplies for their operations in state. The gaming operations are directly and indirectly contributing $1.4 million in tax revenue.

The Economic Impact of Michigan's Indian Gaming Enterprises

This study compiled information from all seven Michigan tribes. There are eight separate gaming enterprises which include casino and bingo operations. Some of the tribes operate businesses to serve customers including restaurants, hotels, and gift shops.

In August 1993, a total of 2,681 people were employed by Michigan gaming facilities. Of these 52% were Native Americans and 48% were non-Indians. Of those employed 49% were welfare recipients and 44% were unemployed prior to joining the gaming facility operations. All of the facilities rank among the top eight employers in their respective counties. Employment of tribal members has substantially increased. On average, tribal unemployment rates decreased 77% as a result of the availability of on reservation employment.

The economic benefits were quite significant. The eight tribes paid a total of $5.7 million in state and federal taxes. The seven tribes reported total revenues of $70.7 million. Gaming payrolls totaled $19.7 million in 1992. The gaming enterprises spent a total of $14.5 million on goods and services.

These facilities continue to flourish as evidenced by the growth from 1992 to 1993 in several key areas. The number of employees has increased by 40%, taxes paid increased by 5%, total receipts increased by 70%, payroll increased by 46% and expenditures on goods and services increased by 84%.

The Economic Impacts of the Foxwoods High Stakes Bingo and Casino on New London County and Surrounding Areas

This study focused on 3 economic impacts of the Foxwoods High Stakes Bingo and Casino, Employment and earnings, AFDC impact, and Real value of housing.

I. Employment and earnings summary

The Foxwoods High Stakes Bingo and Casino, owned by the Mashantucket Pequot Tribe, opened in early 1992. This opening created 6,000 new jobs and is expected to increase to 9,500 in 1994. The average gross pay of casino employees is approximately $25,000 a year plus $9,300 for fringe benefits. The salaries for casino employees are on average, $2,100 more than average New London County salaries before February 1992. Due to increased economic activity, new indirect (non-casino) jobs will also be created. Applying economic impact analysis, the study showed that each new Foxwoods job, supported 1,107 additional non-casino jobs in New London County. Therefore, the combined effect of the 9,500 jobs is a total of 20,017 new jobs. The total associated payroll is estimated to be $478.5 million per year. This analysis also determined that each new Foxwoods job, supported 0.74 additional non-casino jobs in the rest of Connecticut. This translates into more than 7,000 new jobs, with an annual payroll of more than $214 million. Overall, employment created by the opening of the Foxwoods High Stakes Bingo and Casino have a significant correlation to creating jobs in all of Connecticut.

II. AFDC Impact

Using economic methods, this study determined that each new job trims 0.154-0.26 recipients from AFDC (Aid for Dependent Children) rolls. The correlation was also determined that when the economy is more robust, these figures increase. When the economy is more depressed, these figures tend to drop.

To estimate the total savings from the drop in recipients who receive AFDC, it was assumed that a conservative AFDC payment is $200 per month and 26,000 direct and indirect jobs will be created. The total estimated savings would range from $9.61 million to $16.20 million, based on

an estimated reduction in AFDC recipients of 4,004-6,700 people.

III. Real Value of Housing:

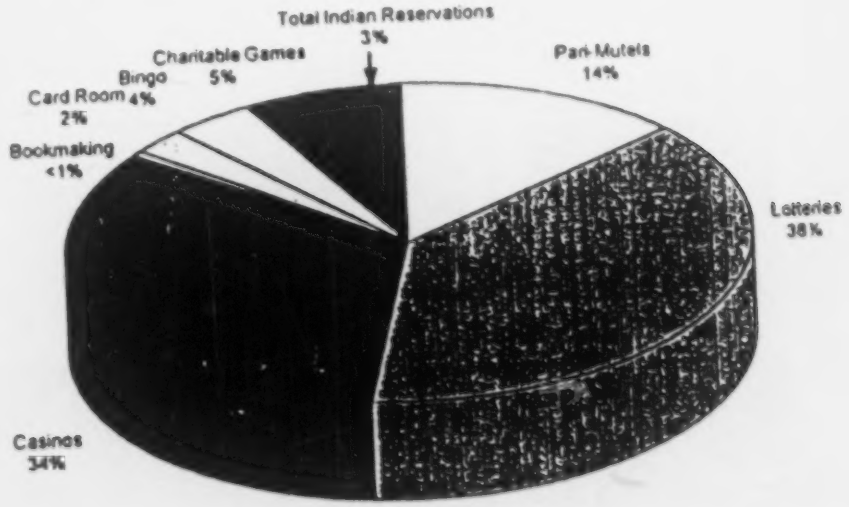
Also applying econometric analysis, estimated that over the long run, every 1 percentage point reduction in unemployment rate in the four eastern most Labor Market Areas (LMA's) in Connecticut will increase better than 7.7 percent in real housing prices in the 4 LMA's. Converting casino-related employment projections into decline in unemployment rates, it is estimated that real housing prices in the 4 LMA's will increase by $1.177 billion by late 1994. In addition, including the effects of non-casino related employment, the total increase in real housing prices is estimated to be $6.1 billions by the end of this decade.

Section E

Appendix

EXHIBIT A

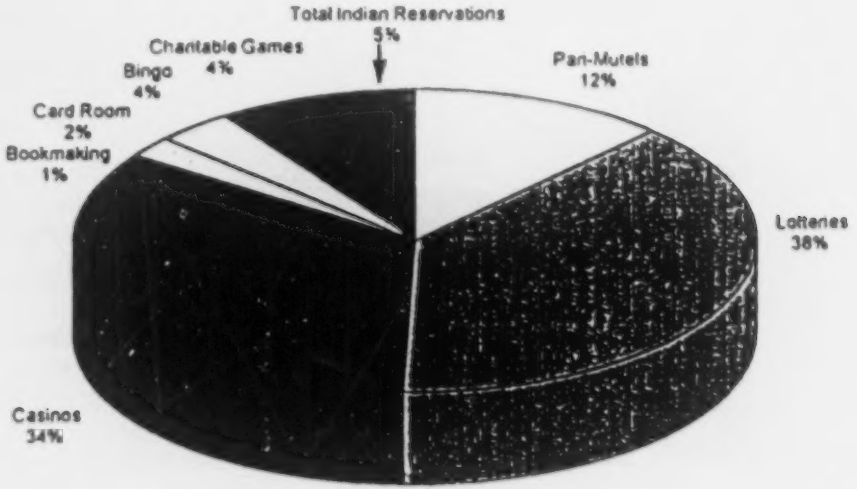
Total US Gaming Revenues Percentages By Industry - 1991



Source: Gaming and Wagering Business 1993

EXHIBIT B

Total US Gaming Revenues Percentages By Industry - 1992



Source: Gaming and Wagering Business 1993

EXHIBIT C

Indian Gaming
Trend in Total Revenues 1985-1992

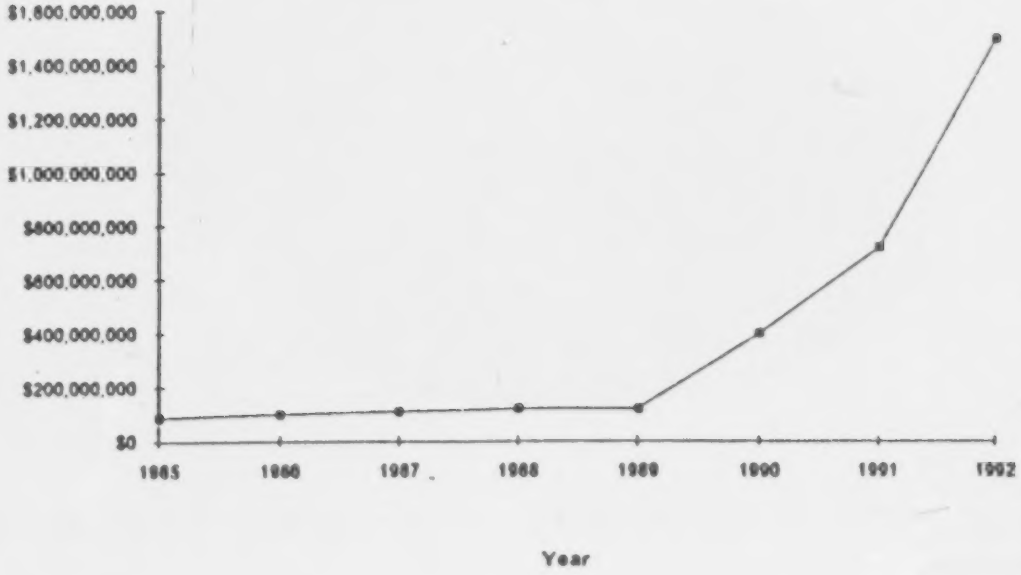
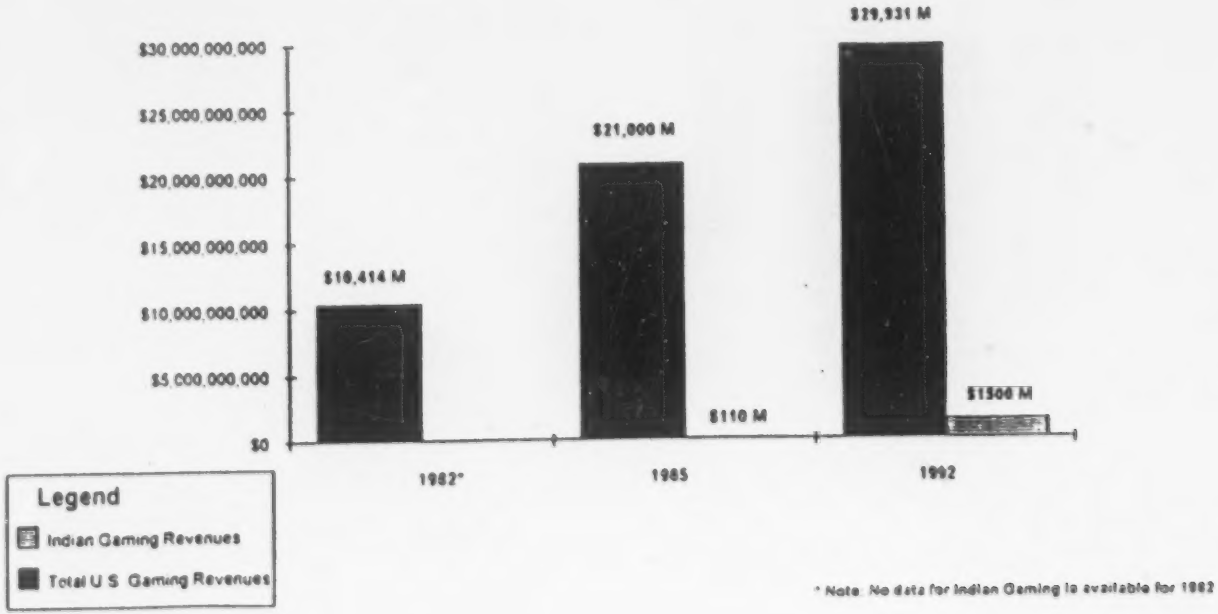


EXHIBIT D

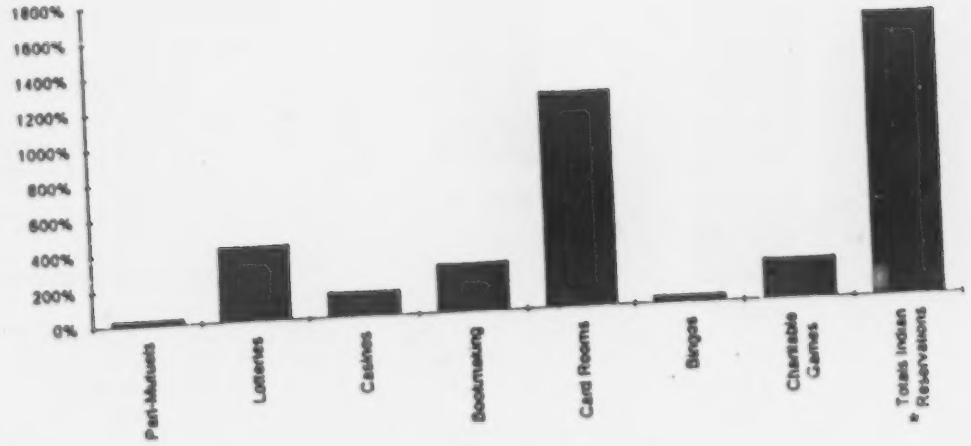
Total US Gaming vs. Indian Gaming Revenues
1982, 1985 and 1992



* Note: No data for Indian Gaming is available for 1982

EXHIBIT E

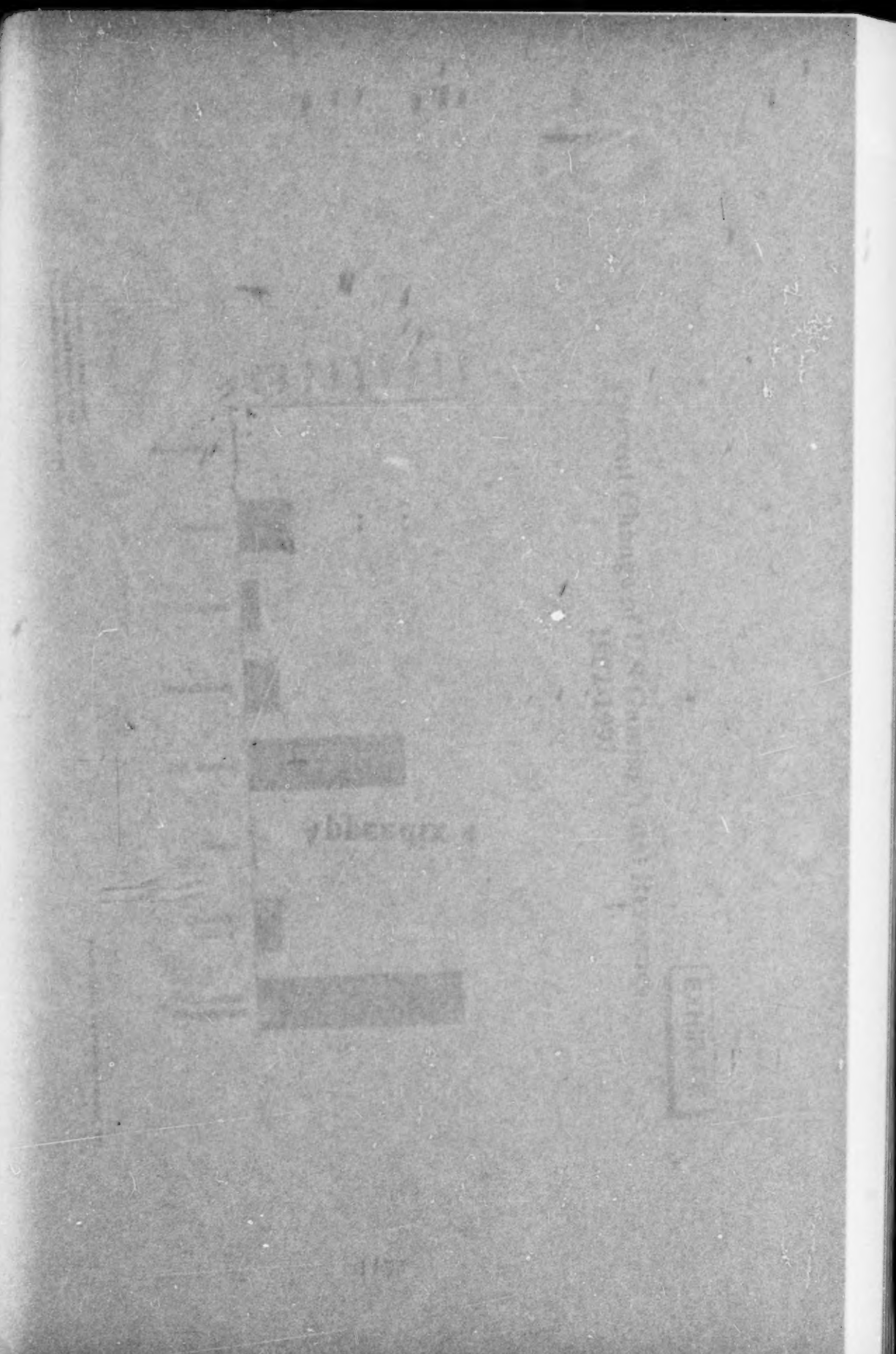
Percent Change of U.S Gaming Total Revenues 1982-1992



* 1985 Base data was used because 1982 revenues for Indian Reservation was not tracked.

Source: Gaming and Wagering Business 1993

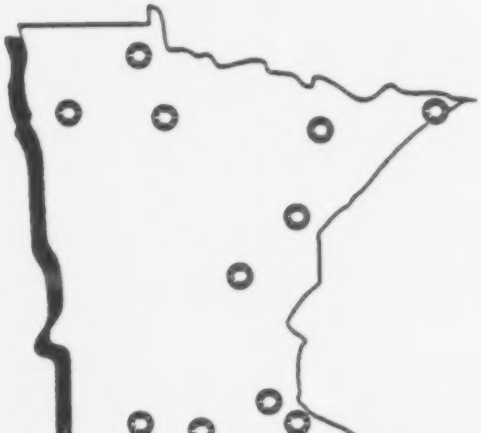
Appendix 4



MIGA

Minnesota Indian Gaming Association

Economic Benefits of Tribal Gaming in Minnesota 1992



MIGA

Minnesota Indian Gaming Association

Economic Benefits of Tribal Gaming in Minnesota 1992

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April 30, 1993

The Minnesota Indian Gaming Association (MIGA) is pleased to present this second authorized study of the economic benefits of Tribal gaming in Minnesota. The federal Indian Gaming Regulatory Act of 1988 provided a statutory foundation for Tribal gaming "as a means of promoting economic development, self-sufficiency and strong Tribal government." This study was undertaken to assess the continuing economic impact of Tribal gaming in Minnesota. Authorized by MIGA, the study presents data gathered from nine of the eleven Minnesota Indian Tribes operating gaming casinos. The data identify economic benefits from Tribal gaming in the areas of :

- Increased Tribal revenues to support Indian government services, economic development and self-sufficiency;
- Increased jobs and employment;
- Reduced public assistance expenditures;
- Increased jobs from secondary spending and construction; and
- Increased out-of-state visitor spending in Minnesota.

The study concludes that Tribal gaming in Minnesota is well on its way to becoming one of the state's largest employers. As this industry continues to develop, other benefits associated with economic progress will be studied. Visible progress is already occurring on Minnesota's Indian reservations in community development, education, health care, nutrition, housing and infrastructure improvements. This study confirms that non-Indian sectors of Minnesota's economy are enjoying sufficient benefits as well.

Tribal gaming occupies a unique niche in the fabric of our society. Unlike other industries, it is operated by sovereign governments to finance programs and services for its citizens, to build economic self-sufficiency on Indian reservations, and to create economic opportunity for Indians and non-Indians alike. In this context, it is clear that Tribal gaming in Minnesota is achieving the objectives set forth by the U.S. Congress.

Sincerely,

Myron Ellis
Chairman, MIGA

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EXECUTIVE SUMMARY

Study Participants

The Minnesota Indian Gaming Association (MIGA) has authorized a study of the economic benefits of Tribal gaming in Minnesota. A professional service firm, KPMG Peat Marwick, provided the technical support and analysis to conduct the study. The following nine MIGA members participated in the study:

- Bois Forte Chippewa
- Fond du Lac Chippewa
- Grand Portage Chippewa
- Leech Lake Chippewa
- Lower Sioux
- Mille Lacs Chippewa
- Prairie Island Sioux
- Shakopee Sioux
- Upper Sioux

Fiscal years are not the same for each Tribe. Some use June 30 and others use September 30 or December 31 as the end of the fiscal reporting period.

Results from the study identified several significant economic benefits.

Gaming Proceeds

During fiscal years 1991 and 1992, the gaming operations of the nine study participants produced the following financial results:

	1992	1991
Revenues after payouts	$390 million	143 million
Less expenditures	223 million	89 million
Available proceeds	$167 million	54 million

The gaming expenditures are benefiting employees and a variety of suppliers and service providers. The proceeds from gaming are being used for purposes consistent with the

National Indian Gaming Regulatory Act of 1988 to:

- Fund tribal government;
- Provide for the general welfare of the Tribe;
- Promote economic development;
- Contribute to charity; and
- Help fund local agency operations.

Proceeds are being used for direct human services, education, housing and infrastructure improvements as well as for investment in the Tribal business enterprises.

Job Creation and Employment

Tribal gaming has resulted in 9,975 new jobs in Minnesota for persons working directly for the Tribal gaming enterprises. Indians hold approximately 27% of the new jobs and non-Indians have benefited from 73% of the new jobs. A majority of the jobs have been created in the non-urban areas of the state where steady jobs on an annual basis are in short supply.

If these jobs were attributed to a single employer, Tribal gaming would be one of the 10 largest employers in Minnesota.

Public Assistance Savings

An analysis of gaming operations in non-urban counties shows a strong correlation between an increase in jobs in the non-urban counties with Tribal gaming facilities and a decrease in AFDC recipients. The number of AFDC recipients decreased by 14% between 1987 and 1992 in the eight non-urban counties with Tribal gaming facilities while the state-wide number of recipients increased 17% for the same period. This produces a benefit to the state in the form of reduced spending for public assistance.

Indirect Employment

A study prepared by the Minnesota Planning Agency estimates an additional 20,000 indirect employment jobs are being supported by Tribal gaming.

Out-of-State Visitor Spending

It is estimated by the Minnesota Planning Agency that out-of-state visitors spent $245 million on various travel related goods and services in fiscal year 1992. This level of spending could support an estimated 7,600 jobs.

Job Summary

The following is a summary of the total number of jobs that could be supported by Tribal gaming based on the methodology used in the study.

Source of jobs	1992	1991
Direct	9,975	4,730
Indirect estimate	20,000	5,300
Visitor spending estimate	7,600	600
Total	37,575	10,630

Other Benefits

There are likely additional benefits from Tribal gaming that have not been quantified due to a lack of data including:

- Increased payroll tax revenues;
- Increased unemployment insurance revenues;
- increased sales tax revenue from visitor spending;
- Increased sales tax revenue from induced spending;
- Improved housing;
- Improved health care;
- Increased job skills; and
- Improved self-esteem from being employed.

STUDY BACKGROUND AND APPROACH

Background

The Minnesota Indian Gaming Association (MIGA) is an organization that includes members from each of the eleven Tribes in Minnesota. These communities are federally recognized Tribes and each has an independent tribal government.

MIGA has authorized a second study of the economic benefits of Tribal gaming in Minnesota. The professional service firm of KPMG Peat Marwick was engaged by the members to provide technical assistance and analysis with respect to the study elements. Exhibit 1 is a listing of the Indian Tribes and gaming facilities that participated in the study. Since some Tribes and gaming facilities did not participate, the aggregate data included in the study is less than the total Tribal gaming picture in Minnesota.

Exhibit 1

PARTICIPATING MEMBERS

Tribe	Gaming Facility
Bois Forte	Fortune Bay
Fond du Lac	Fond du Luth and Big Bucks
Grand Portage	Grand Portage Casino
Leech Lake	Northern Lights and Palace Bingo
Lower Sioux	Jackpot Junction
Mille Lacs Chippewa	Grand Casino Mille Lacs and Hinckley
Prairie Island Sioux	Treasure Island
Shakopee Sioux	Little Six and Mystic Lake
Upper Sioux	Firefly Creek

Approach

Data was based on the 1992 fiscal year. Data collection forms were developed and included the following elements:

- Revenue — Revenue data for each gaming facility was obtained directly from the facility. The term revenue in casino operations is generally defined as the win from gaming activities, that is, the difference between gaming wins and losses, not the total amount wagered. All reference to revenue in this study is after payouts and does not include the total amount wagered.
- Source of Revenue — Revenue data has been classified by major source. The major classifications of Tribal gaming revenue in this study include:
  - — Video games,
  - — Blackjack,
  - — Bingo and pull tabs, and
  - — Concessions and other.
- Operating Expenditures — Expenditure data was obtained from each gaming facility and classified into the following categories:
  - — Salaries and wages,
  - — Payroll taxes and benefits,
  - — Advertising/promotion,
  - — Utilities, and
  - — All other operating expenditures.
- Use of Proceeds — Information was obtained on the use of proceeds made available from gaming activities. The major classifications for use of proceeds include:
  - — Direct services and per capita payments to members,
  - — Human services and education,
  - — Charitable contributions,
  - — Investments,

— Management fees,
— Other tribal government trusts,
— Enterprise facilities,
— Public infrastructure, and
— Housing.

Other areas of economic analysis included the following:

- Employment Trends — Data was obtained on the number of jobs created by Tribal gaming including the direct jobs at the gaming facilities and the indirect jobs resulting from gaming expenditures.
- Public Assistance Trends — Data was obtained on the numbers of persons receiving public assistance in Minnesota to analyze any changes that might be related to the growth in gaming employment.

Sources of Data

Tribal gaming is a relatively new business activity in Minnesota and data sources are in a developmental stage. Fiscal data related to gaming operations was obtained from internal reports prepared by the accounting and administrative staffs of the participating MIGA members. The staff personnel have attempted to answer all inquiries essential to conducting the study and have made reasonable efforts to present accurate data. The fiscal data was not independently verified to other documents. It is possible that the data presented includes inconsistencies in classification or other discrepancies because each facility has developed its own methods of reporting. Other sources of data are referenced where appropriate.

GAMING OPERATIONS: FISCAL DATA

Status of Tribal Gaming in Minnesota

The status of Tribal gaming in Minnesota has been documented in a report to the legislature submitted by the offices of the Governor and Attorney General and the Tribal State Compact Negotiating Committee, dated September 5, 1991. The following is a summary of items related to Tribal gaming operations in Minnesota:

- Indian Gaming Regulatory Act (IGRA) — Signed into law on October 17, 1988. The Act provides the regulatory framework for various forms of gambling on Tribal lands. A primary purpose of the Act is to provide a statutory foundation for Tribal gambling operations as a means of promoting economic development, self sufficiency and strong Tribal government.

- Video Games of Chance Compacts — between October 20, 1989 and the spring of 1991, the State of Minnesota entered into video compacts with the eleven Tribal governments in the state.

- Blackjack Compacts — between May and August of 1991, the State of Minnesota entered into blackjack compacts with the eleven Tribal governments in the State.

The actions of Congress and the State of Minnesota have established the regulatory framework for Tribal gaming. The Tribal governments have established gaming ordinances, built facilities and initiated operations pursuant to the evolving regulatory framework.

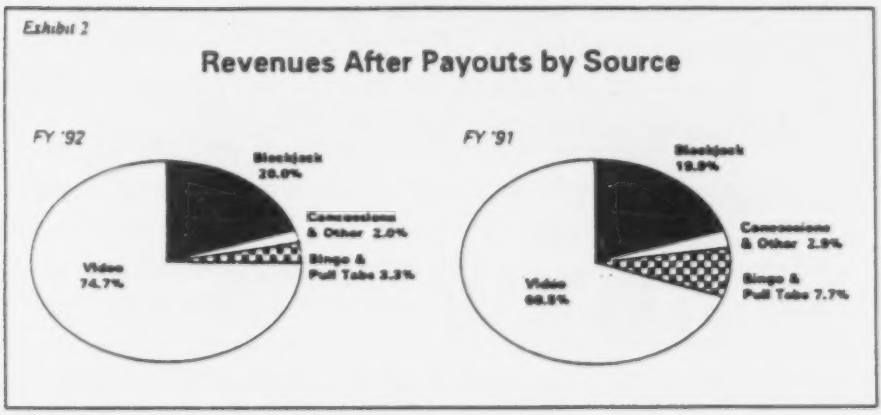
Gaming Operations–Revenues

Fiscal data was obtained from reports furnished by the study participants. Revenues reported are net of payouts. The following is a summary of revenues by major source in millions of dollars .

Revenue source	1992	1991
Video	$ 291.5	99.3
Blackjack	77.9	28.5
Bingo and pull-tabs	12.8	11.0
Concessions & other	7.8	4.2
Total	$ 390.0	143.0

Exhibit 2 illustrates revenue information by percent.

Exhibit 2



Source: Fiscal reports of study participants

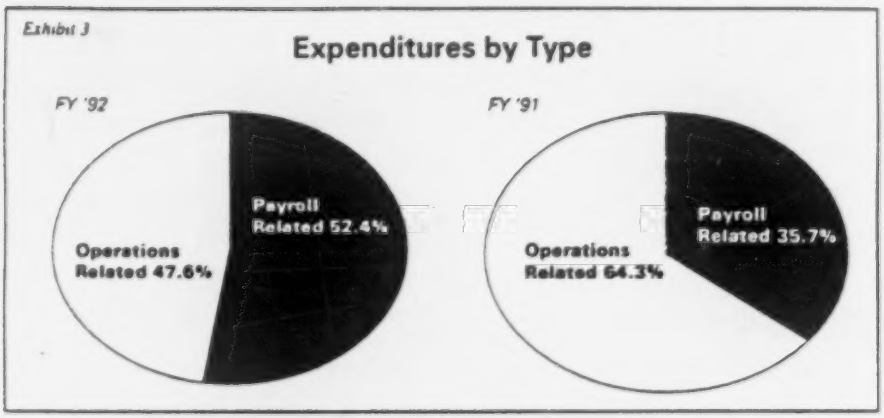
Gaming Operations–Expenditures

Fiscal data was obtained from reports furnished by the study participants. Expenditures were classified by major expenditure type. The following is a summary of expenditures by type in millions of dollars.

Expenditure type	1992	1991
Payroll-related total	$ 116.9	31.8
Operations-related total	106.1	57.2
Total	$ 223.0	89.0

Exhibit 3 illustrates expenditure information by percent.

Exhibit 3



Source: Fiscal reports of study participants

The category of operating expenditures includes various expenditures associated with the gaming operations such as advertising, utilities, training, security (if contracted), uniforms, supplies, maintenance, installation of equipment, business services and costs related to the use of facilities.

Gaming Operations — Use of Proceeds

The Indian Gaming Regulatory Act requires Tribal governments to adopt an ordinance governing the conduct of any gaming activity. The ordinance must prohibit the use of net revenues from any gaming for purposes other than to:

- Fund Tribal government;
- Provide for the general welfare of the Tribe and its members;
- Promote Tribal economic development;
- Donate to charity; and
- Help fund local government agency operations.

The following is a recap of the aggregate operations of the nine gaming operations for fiscal years 1991 and 1992 in millions of dollars:

Available proceeds	1992	1991
Revenue after payouts	$390.0	$143.0
Less expenditures	223.0	89.0
Available proceeds	$167.0	$ 54.0

For purposes of this study the use of gaming proceeds have been summarized as follows in millions of dollars.

Use of proceeds	1992	1991
Direct services	$ 39.5	$17.5
Human services and education	4.0	3.1
Charitable contributions	.8	—
General government and trusts	13.4	2.5
Management fees	8.3	3.6
Capital expenditure enterprise	32.0	27.3
Capital expenditure infrastructure	6.5	—
Housing	17.3	—
Investments and unallocated	45.2	—
Total	$167.0	$54.0

The following explanatory notes are provided to assist in understanding how gaming proceeds are being used by the Indian Tribes:

- Self Determination — The Indian Gaming Regulatory Act intended that Tribal governments be the primary beneficiary of gaming programs. Under broad guidelines established by the Act, Tribal governments have decision-making authority regarding this use of gaming proceeds.
- Aggregate Data — Data in the study has been aggregated. There are significant differences in the use of proceeds among the participating members.
- Capital Expenditures Enterprise — Approximately $27 million of fiscal year 1991 and $32.0 million of fiscal year 1992 proceeds have been expended for the construction, renovation or improvement of gaming facilities or is being held in short term investment accounts pending disbursement for construction projects recently completed or in progress.
- Per Capita Payments — The use of gaming proceeds is in large part driven by demographic factors. There are eleven Indian Tribes in the state of Minnesota: four Sioux and seven Chippewa. The Sioux communities have a much smaller population than the Chippewa communities (approximately 1,500 Sioux and 45,000 Chippewa by one 1991 estimate). The Sioux Tribes are much closer to population centers in the southern half of the state. The Sioux Tribes also have three of the larger gaming operations and are, therefore, in a better position to make per capita payments. The Chippewa Tribes have larger populations to provide for and smaller commercial markets. Therefore, the use of gaming proceeds in Chippewa Tribes is more likely to

be used to support general government and human services rather than per capita payments.

EMPLOYMENT TRENDS

Objective of Indian Gaming Regulatory Act (IGRA)

A primary objective of IGRA as stated in United States Public Law 100-497 is:

> *"to provide a statutory basis for the operation of gaming by Indian Tribes as a means of promoting tribal economic development, self-sufficiency and strong tribal governments."*

The trend in employment can be used to measure the accomplishments of economic development objectives.

Tribal gaming (primarily bingo and pull tabs) has been around for many years. High stakes bingo gained considerable publicity in 1982 when the Shakopee Mdewakanton Sioux opened the Little 6 Bingo Palace at Prior Lake (within the Twin City metropolitan area). Other Indian Tribes subsequently opened or expanded bingo operations in other parts of the state. During 1990, video slot machines were introduced in various operations and blackjack followed in 1991.

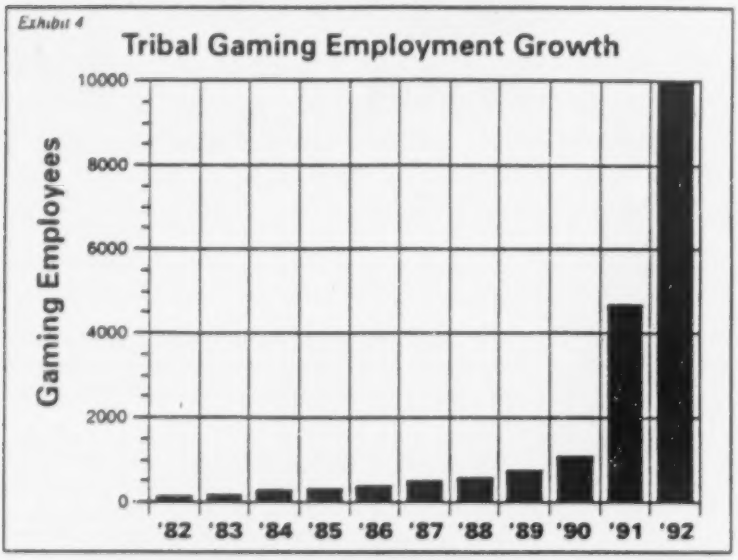
Tribal gaming operations and activities grew rapidly during 1991 and 1992 as newer facilities were opened.

Employment Trends

As the characteristics of gaming changed, the nature of the employment patterns changed. Bingo games were typically played in the evenings for a few hours. Some of the smaller operations did not have daily games. With the introduction of video slots and blackjack, the gaming audience changed, the gaming hours changed and the number of employees needed to staff the operations increased.

The number of persons employed by gaming operations was obtained from the study participants. Exhibit 4 illustrates the growth in employment from 1982 to 1992. As evident from the exhibit, the number of Tribal gaming jobs grew by over 4,000 during fiscal year 1991 and another 4,000 during fiscal year 1992.

Exhibit 4



The pay range for a majority of the jobs created is $5 to $10 per hour. While these wage rates are not impressively high, there are a number of beneficial attributes to the gaming jobs, including:

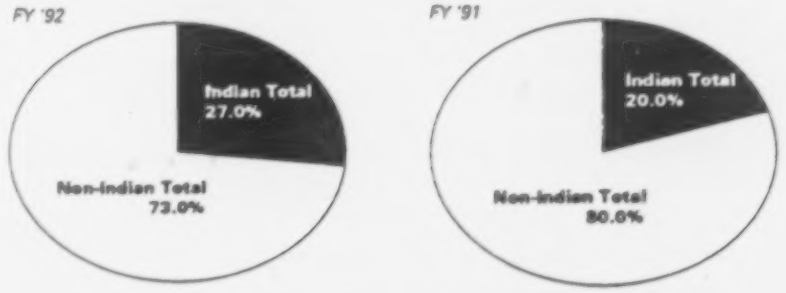
- Location of jobs in non-urban areas where more jobs are needed to balance the state economy;
- Location of jobs on or near Indian lands where unemployment has historically been excessive;
- Flexible hours allowing households to add incremental income without incurring substantial incremental cost for day care, transportation or clothing; and
- Opportunities to learn and develop basic job skills.

Indian and Non-Indian Job Distribution

An analysis of employment trends shows an interesting distribution between Indian and non-Indian employees. As shown in Exhibit 5, 20% of the gaming jobs were held by Indians in 1991 and 80% were held by non-Indians.

Exhibit 5

Overall Employment Ratio



The distribution of jobs between Indians and non-Indians is primarily attributable to demographics and location of the gaming facilities. There are more Indian job seekers in the northern part of the state where the gaming facilities are smaller.

The Bureau of Indian Affairs prepares periodic reports on the Indian population receiving services and the labor force estimates. The January, 1989, report estimates that 4,300 Indians living on or adjacent to reservations in Minnesota were not employed and were seeking work. Stated another way, 38% of the Indians between the ages of 16 and 64 were unemployed and seeking work.

During 1991 and 1992, the total number of jobs created by Tribal gaming could accommodate every unemployed Indian job seeker living on or adjacent to a reservation in Minnesota. Unfortunately, the jobs created were not all within a reasonable commute (25 miles) of the prospective Indian job seekers.

The gaming operations in the southern part of Minnesota are near the smaller populations of Indians. Of the study participants, five operations have the potential to virtually eliminate unemployment on the reservation. Tribal gaming is not the complete answer to Indian unemployment because:

- There will likely be demographic or geographic barriers to full employment; and
- There will likely be individuals who are unable to work in gaming facilities for a variety of reasons

The study participants are all aware of the need to use gaming proceeds to develop other areas of Tribal economies and create a variety of job opportunities.

Relative Size of Tribal Gaming Employment

The relative size of Tribal gaming employment was compared to the largest employers in Minnesota. Exhibit 6 lists the largest 25 employers. If Tribal gaming were a single corporation, the combined employment would rank in the top 10.

Exhibit 6

Employment Comparison to Minnesota's 25 Largest Employers

Rank	Company Name	Minnesota Employment
1	3M	23,000
2	Dayton Hudson Corporation	21,650
3	Northwest Airlines Inc.	17,500
4	Mayo Foundation	16,500
5	Health One Corp.	11,000
6	Honeywell Inc.	11,000
O	*Tribal Gaming 1992*	9,975
7	IBM Corporation	9,300
8	Lifespan Inc.	8,800
9	Norwest Corporation	8,151
10	Unisys Corporation	8,000
11	U.S. West	7,316
12	Fairview Hospital & Health Services	7,000
13	Northern States Power Company	7,000
14	First Bank System Inc.	6,426
15	Fingerhut Corporation	5,800
O	*Tribal Gaming 1991*	5,747
16	K mart Corporation	5,700
17	Health East Corp.	5,050
18	Control Data Corporation	4,864
19	J.C. Penney Company Inc.	4,800
20	Burlington Northern Railroad Inc.	4,500
21	United Parcel Service	4,200
22	The Prudential	4,100
23	Sears Roebuck and Company	4,033
24	Gateway/Rainbow Foods Inc.	4,000
25	Andersen Corporation	3,960

Source: Minnesota Department of Trade and Economic Development Report of Minnesota's Largest Corporate Employers, September 10, 1991

PUBLIC ASSISTANCE TRENDS

Job Creation and Public Assistance Relationships

A common economic development strategy is to develop industries and jobs in areas considered depressed. The rationale for this strategy is that creating a job in a depressed area will have a relatively greater benefit than creating a job in an economically progressed area. Depressed areas of a state or county will traditionally rely on and absorb comparatively more public assistance than a metropolitan area relative to their individual contribution to the state's economy.

The significance of the Tribal gaming industry in Minnesota is that a majority of the facilities, by virtue of being located on Indian reservations, are located in rural counties and distributed throughout the state. Consequently, the introduction of Tribal gaming has not only led to the creation of many jobs, but jobs which have a substantially greater economic benefit than would be the case in the urban areas.

Thus, when analyzing the benefits of the Tribal gaming industry, changes in demand for public assistance were considered.

Analysis Approach

Data pertaining to public assistance spending within the state was obtained from the State Department of Human Services. After considering the major public assistance programs, the Aid to Families with Dependent Children (AFDC) program was selected due to its significance in the overall public assistance environment. In the state of Minnesota, the AFDC program currently serves 63% of the Indians receiving public assistance, and 45% of all recipients receiving public assistance (making AFDC the largest sin-

gle human service program in the state in terms of recipient counts).

AFDC recipient counts is selected counties covering the period from 1987 to 1992 were analyzed. Because of the relative newness of Tribal gaming, identifiable trends would most likely be evident in that time period.

Only those non-urban counties with Tribal gaming facilities were considered. These parameters were used because, in such counties, the gaming facilities have emerged as one of the major employers. Any fluctuations in AFDC demands would more strongly correlate to the presence of Tribal gaming than it would in an urban area. A wider range and number of economic factors would influence a change in public assistance patterns in an urban area. Given the criteria, Cass County containing the Northern Lights and Palace Bingo facilities, Cook County containing Grand Portage Casino, Goodhue County containing the Treasure Island facility, Mahnomen County containing the Shooting Star Casino, Mille Lacs County containing the Grand Casino, Pine County containing the Grand Casino Hinckley, Redwood County containing the Jackpot Junction facility, and Roseau County containing the Lake of the Woods Casino were studied.

Recipient count trends in each selected county were then compared to the trends in the state as a whole and to the largest urban counties, Hennepin and Ramsey.

Recipient Trends

The results of this analysis suggest that the employment generated by the Tribal gaming industry is reducing the demand for AFDC services and expenditures, and is therefore fulfilling one of the main goals of the State/Tribal compact — economic development.

Exhibit 7 displays the number of AFDC recipients for Hennepin and Ramsey counties, the state of Minnesota, and the four non-urban counties containing major Tribal gaming operations.

Exhibit 7

AFDC RECIPIENT COUNTS

	1987	1991	% Increase (Decrease) from 1987	1992	% Increase (Decrease) from 1987
Hennepin	42,349	53,524	26%	54,665	29%
Ramsey	24,298	33,169	36%	35,280	45%
State of MN	156,932	181,021	15%	183,676	17%
8 non-urban counties with gaming*	6,002	5,255	(12%)	5,137	(14%)

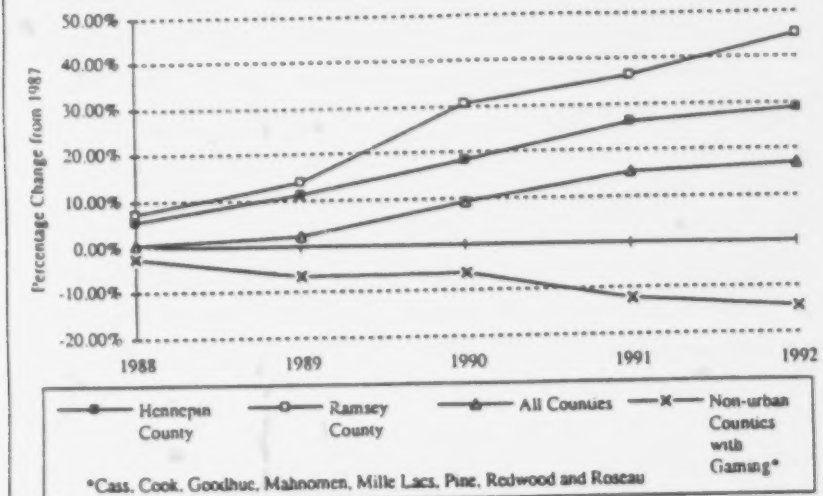
* Cass, Cook, Goodhue, Mahnomen, Mille Lacs, Pine, Redwood and Roseau

Source: Minnesota Department of Human Services.

From 1987 to 1992, the number of AFDC recipients increased by 45% in Ramsey County, 29% in Hennepin County, and 17% in the state as a whole. During the same five-year period, the combined number of AFDC recipients in the eight non-urban counties with gaming declined by 14%. Exhibit 8 graphically displays the percentage change from 1987.

Exhibit 8

Human Services—Changes in AFDC Recipient Counts



Source: Recipient count data from Minnesota Department of Human Services

The declines in AFDC recipients in the non-urban counties may consequently free up federal and state resources which could be used to help offset the cost of increased recipient numbers in other counties.

The presence of Tribal gaming in Minnesota has led to many jobs. These jobs are proportionately employing a large number of people (Indian and non-Indian) who might typically have difficulty finding a job and depend upon state and federal assistance for their livelihood. This in turn relaxes some constraints on public budgets and allows for further economic development growth.

INDIRECT EMPLOYMENT

A study prepared by the Minnesota Planning Agency used the Regional Economic Model, Inc. (REMI) to estimate the gross direct, indirect and induced annual statewide impact of Tribal gaming in Minnesota as follows:

Total jobs	32,700
Direct jobs at January 1993	10,353
Indirect jobs	22,347

See Minnesota Planning Agency publication, *Minnesota Gambling 1993*, page 11.

OUT-OF-STATE VISITORS

A study by the Minnesota Planning Agency estimated that 20% of all visitor days to casinos are by non-Minnesotans. The REMI model used in the study estimated the total impact of visitors as follows:

Jobs	7,600
Gross product (value of goods and services)	$245 million

See Minnesota Planning Agency publication, *Minnesota Gambling 1993*, page 11.

Appendix 9

Q
K
A
J

ESTIMATED GROSS ANNUAL ECONOMIC IMPACT OF TRIBAL GAMING

• Actual casino employment (Jan 1992):	5,747 people
• Estimated annual visitor days:	5.9 million
• Estimated amount wagered (1991):	$900 million
• Estimated gross revenues to casinos: (after prizes, 1991)	$180 million

Using these figures, the Regional Economic Model, Inc. (REMI) estimates the gross direct, indirect and induced annual statewide impact of Tribal gaming as follows:

• Jobs	13,700 jobs
• Gross product (value of goods and services)	$550 million

Major categories of jobs generated are eating and drinking establishments, retail, lodging, cleaning, construction, wholesale and professional services.

IMPACT FROM OUT-OF-STATE VISITORS

An estimated 15 percent (900,000) of all visitor days to casinos are by non-Minnesotans. Many come specifically for gambling. Others are tourists already in the state. The REMI model estimates the total impact of these visitors to be:

• Jobs	2,300
• Gross product (value of goods and services)	$90 million

The estimates reflect total activity derived from tribal gaming, not all of which is *new* activity. Some represents a shift of Minnesota and tourist consumer expenditures from other activities. Some is new economic activity generated by

new tourist spending or increased resident spending. These estimates are approximations based on annualization of limited available monthly data. Available economic models are not easily calibrated for the gaming industry.

Source: REMI model, MN Office of Tourism, MN Planning estimates.

Appendix 10

MINNESOTA GAMBLING 1993

PLANNING

PERCENT OF TRIBAL GAMING CUSTOMERS FROM OUTSIDE MINNESOTA

Grand Portage Casino, Grand Portage	90%
Lake of the Woods Casino, Warroad	50%
Jackpot Junction Casino, Morton	42%
Shooting Star Casino, Mahnomen	35%
Treasure Island Casino, Red Wing	25%
Big Bucks Casino, Cloquet	20%
Fond du Luth Casino, Duluth	20%
Northern Lights Casino, Walker	20%
Fortune Bay Casino, Lake Vermilion	15%
Mystic Lake Casino, Prior Lake	15%
Grand Casino Hinckley, Hinckley	12%
Grand Casino Mille Lacs, Garrison	12%
Firefly Creek Casino, Granite Falls	10%
Palace Casino, Cass Lake	10%

- The percentage of non-Minnesotans visiting tribal casinos increased from 15 percent in 1991 to 20 percent in 1992.
- Total visitor days increased from 6 million in 1991 to 12.9 million in 1992.

Source: Tribal officers and casino managers.

. . . time of this report, information was not available on the effect of recent developments on bars and restaurants in casino and adjacent counties.

Census data for 1990 shows that 44 percent or 20,730 Minnesota Indians were living in poverty, compared to 10 percent of the general population. The unemployment rate for Indians in 1990 was 20 percent, compared to 7 percent for the general population. Recent figures show Indian employment at casinos increasing by more than 87 percent in the past year, to just over 3,000 in January 1993.

The Mille Lacs Band of Ojibwe, owners of Grand Casino Mille Lacs and Grand Casino Hinckley, report they have provided jobs for any band member wanting to work. The Shakopee Mdewakanton Dakota Community, owners of Mystic Lake Casino, initiated a program for urban Indians from Minneapolis and St. Paul, offering job training and transportation from inner-city areas to the casino. One hundred twenty Indians participate in this program, which has plans to expand to non-Indians.

Job creation for non-Indians has exceeded that of Indians. Indeed, one might see Indian gaming as the largest federal employment scheme in many years. This is noteworthy because the gambling industry employs large numbers of people in jobs that require only short-term training — the type of jobs that increasingly have been shifted to less-developed countries in other industries. Indian casinos also employ growing numbers of professionals in marketing, accounting, management and security. Tribal officials report that Indian casinos employ 10,350 workers, of whom 8,400 work full time.

The number of visitor days to casinos by non-Minnesotans nearly tripled between 1991 and 1992. If a person spends all or part of a day at a tourist-related facility, it is counted as a visitor day. Out-of-state visitors to casinos are having a significant economic effect on Minnesota. According to the Department of Trade and Economic Development these visitors were responsible for a $245 million dollar increase in the state's gross product and the creation of 7,600 jobs. Estimates were developed using the Regional Economic Model and represent total economic activity derived from tribal gaming, not all of which is new activity. In part, these estimates represent a shift of Minnesota and out-of-state tourist consumer expenditures from other activities. The numbers also include new economic activity generated by new tourist spending or increased resident spending.

Jobs created directly or indirectly by casino gambling have brought many people from welfare to the work force. In the 10 casino counties, the average number of people receiving Aid to Families with Dependent Children each month declined by 3.1 percent from 1990 to 1992; this decline represents 574 people moving off welfare. At the same time, the economic recession was increasing the number of recipients in the rest of the state by 14.6 percent. If there had been no casinos, and the welfare rate in the 10 counties had climbed as fast as the rest of the state, the costs of AFDC would now be $7 million per year higher, not including additional medical benefits or food stamps.

The new jobs have gone mainly to the American Indian community and the white population; both groups show a reduction in statewide AFDC benefits. All other racial groups had an increase in AFDC recipients. From 1991 to 1992, the number of adults statewide on AFDC decreased 6.4 percent for American Indians, from 4,451 to 4,168, and decreased 1.4 percent for whites, from . . .

Appendix 11

INDIAN GAMING REGULATORY ACT

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE NEED FOR
AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT

MAY 17, 1994
WASHINGTON, DC

PART 3

PRELIMINARY ESTIMATES OF ECONOMIC IMPACTS RELATED TO TRIBAL GAMING IN SOUTH DAKOTA

Submitted by: Dr. Michael K. Madden
Professor of Economics, University of South Dakota

Tribal gaming commenced in South Dakota in October of 1990 with the opening of the Royal River Casino in Flandreau. Since then four additional casinos have begun operations with the latest occurring in the spring of 1993. (Refer to the accompanying state map for their respective geographical locations.)

The Travel Industry

During the last nine years, I have been responsible for measuring the economic impacts of the vacation travel industry throughout the state and have accordingly tracked the economic impacts of tribal casinos as they have developed since 1990. The added travel spending in each of the counties in which tribal casinos are located has been substantial. Prior to tribal gaming, aggregate travel spending in these five counties totaled about $8 million with Codington County (Watertown) accounting for the bulk of this amount. In 1993, travel spending in these five counties amounted to about $31 million, an increase of 281%. Together, these counties now account for nearly 8% of tourism spending in the entire state compared to about 2% prior to tribal gaming.

Economic Impacts

Visitor spending translates into economic impacts such as jobs and earnings. Although no formal economic impact study has been undertaken to date, preliminary discussions have begun concerning the completion of such a study in the near future. Upon the completion of this research, more precise economic estimates will be possible. The following

economic impact highlights are based on an informal survey of the five operating tribal casinos.

- Direct employment in these casinos today amounts to more than 1,700. Assuming indirect employment impacts are similar to the South Dakota travel industry in general, an additional 570 jobs have been generated in the state through the multiplier effect. The total impact on employment is therefore estimated to be 2,270.

- It is estimated that 70 to 75 percent of the direct employment positions are held by Native Americans. This translates into an increase of between 1,200 and 1,300 new jobs held by Native Americans in South Dakota. The remaining 25 to 30 percent of the jobs represent new employment opportunities for South Dakotans living in communities near the casino operations.

- New wages and salaries in the regions surrounding the tribal casinos are estimated to be more than $25 million. Because most regions surrounding the tribal casinos are of low population, these added earnings have produced significant relative impacts on personal income within communities.

- Non labor operating expenditures amounts to at least $22 million for the five operating casinos. These expenditures are related to the required business purchases of goods and services from local and non local vendors. Examples include food and beverages, utilities and various other miscellaneous purchases.

- In addition, an undetermined amount of business activity occurs through spending by casino employees.

- It is estimated that tribal profits derived from gaming operations amounted to nearly $9 million in 1993.

- The use of these profits vary from tribe to tribe. Some of the resources have been allocated to infrastructure improvements relating to the casinos themselves. Examples include lodging and camping facilities as well as additions to casino capacity. Other economic development programs have also been pursued. Training and educational programs for tribal members have been instituted or expanded within a number of the tribes.

- At least $750,000 in contributions have collectively been made to tribal and other social programs. Examples include day care facilities, senior citizen programs, law enforcement and treatment centers.

The Future

There are at least three additional tribal casinos at some stage of planning in South Dakota. (See attached map.) If economic growth occurs in proportion to what has been demonstrated since 1990, a number of inferences can be drawn. Vacation travel spending related to tribal casinos will grow from $31 million today to $52 million. Total employment will increase from 2,270 to 3,770 and earnings are expected to grow from $22 million to $37 million.

Conclusion

From an economic standpoint tribal gaming has proven to be an effective rural economic development tool. The added economic activity has been distributed in the communities surrounding the casinos producing economic vitality which obviously would not have occurred in the absence of tribal gaming enterprises.

SUPPLEMENTAL SHEET

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TOPICAL OUTLINE

Preliminary Estimates of Economic Impacts Related to Tribal Gaming in South Dakota

A. The Travel Industry
B. Economic Impacts
C. The Future
D. Conclusion

	Jobs	% Ind.	% Non Ind.	Earnings	Op. Exp.	Soc. Spend	Infrastruct	% of Change in Tourism	
Fort Randall	654	66.0%	34.0%	$ 7,500,000	$12,400,000	$ 100,000	Sewer, Water, Lodging	146	6,306,597
Golden Buffalo	171	85.0%	15.0%	1,900,000	1,600,000	127,000	Lodging, RVPark A	131	6,711,688
Lode Star	141	91.0%	9.0%	1,100,000	1,027,000	100,000			1,342,966
Royal Fever	345	36.0%	64.0%	3,644,000	3,500,000	150,000		642	4,712,429
Dakota Sioux	391			4,400,000	3,700,000	150,000		66	13,125,165
	1,702	60.5%	30.5%	18,344,000	22,227,000	627,000			31,258,845
	562			7,337,600					
	2,264			25,681,000	22,227,000	627,000			
	3,771			42,785,546	37,030,182	1,044,582			

Appendix 12

INDIAN GAMING REGULATORY ACT

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE NEED FOR
AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT

APRIL 26, 1994
WASHINGTON, DC

PART 2

Testimony

of

JoAnn Jones, Tribal Chair,

&

Alvin Cloud, Gaming Liaison

Wisconsin Winnebago Nation

before the

Senate Committee on Indian Affairs

U.S. Senator Daniel Inouye, Chair

U.S. Senate Hearing Room

216 Hart Senate Office Building

Washington D.C. 20510

April 26, 1994

The Wisconsin Winnebago Nation has two nationally recognized firms that assist in management and oversight. The Accounting firm Arthur Anderson conducts all gaming audits and financial reports required under tribal, state and federal law.

Attorneys Process & Investigation Services Inc. (API), a nationally respected private investigative consulting agency, conducts the background investigations and regulatory enforcement required by tribal ordinance, tribal/state compact and IGRA. With API, we have a top notch private investigation firm of 35 people with an estimated 500 years of law enforcement experience at our disposal.

API assisted us by providing information that was not available from state or federal sources. As a result, serious suitability issues were identified and the Winnebago Nation took appropriate regulatory actions. This information helped our operations keep their integrity and protect our Nation. Again this information was not available to us from state or federal sources.

All prosecutions of state criminal law are provided by the State of Wisconsin under the tribal/state compact entered into by the Nation and the State in July of 1992.

Many people believe that Indian country cannot possibly have the level of security and control that Nevada and New Jersey have over their gaming operations. That is not true. The Wisconsin Winnebago have state-of-the-art security, surveillance, on-line accounting, and audit controls. The Winnebago employ nearly 1700 people at 3 casinos. More than 300 of these employees are working in the security, surveillance and accounting areas to insure the integrity of the games, to protect our customers and to protect the Winnebago Nation.

We have these controls because it our people's money that is at stake. We know what can happen. We want to do

everything that we can to protect these enterprises because it is our children's future that is at stake. We challenge anyone to come to the lands of the Winnebago Nation to review our personnel, procedures and equipment. If any governmental body, local, state or federal is doing more to protect the integrity of its games, its customers, and its citizens we want to know about it.

The Winnebago Nation's gaming operations are very successful in large part because the Nation has a strong and effective gaming ordinance; experienced legal, accounting and investigative personnel; and a dedicated Gaming Commission with all the regulatory and enforcement authority necessary for the maintenance of successful gaming.

Benefits of Indian Gaming

Indian gaming is not about gambling. It is about survival and bringing my people out of the third world conditions that they have lived in for generations. It is about sovereignty and the right of one government to operate free from the interference of another government. Finally, it is about an agreement and compromise worked out among sovereign governments.

When Congress established the National Indian Gaming Regulatory Act it said the act had three purposes: Promote tribal economic development, self sufficiency, and strong tribal government. Indian gaming in Wisconsin is doing all of these things and more.

I have heard the testimony given at the recent hearing regarding the positive impact that Indian gaming has had on not only tribal, but on local economies at well. The situation is not any different in Wisconsin, but the facts bear repeating.

The Winnebago Nation employs more than 2000 people. Nearly 80% of these people are employed at our gaming

enterprises. Employment has quadrupled in the last two years. More than 60% of these employees are non-Indian. More than 300 of our gaming employees came from the welfare rolls. Statewide, Indian gaming jobs took 800 people off welfare and 1400 more from the unemployment rolls. Casino income is the sole support for the families of nearly 80% of the casino employees. According to Health & Social Service Secretary Gerald Whitburn, state aid to Indian families has dropped. He says that Indian gaming is a major reason for this drop.

Indian gaming has also been a great benefit to the larger community. For example, in Sauk County where one of our casinos is located, unemployment in 1991 was 30% above the state average, now it is only 3% above the state average.

In Wisconsin alone, Indian gaming has created 7000 jobs. Is there someone that has 7000 jobs that will employ these Wisconsin people? According to a Dept. Of Commerce study, when government creates jobs it costs $20,000 per job. Does someone have the $140 million replace the 7000 jobs threatened by attacks on Indian gaming?

The Winnebago Nation has no natural resources and we do not have a significant land base, yet we are expected to provide the same governmental services that the Navajo or the Yakima tribes provide their members. We cannot depend on the federal government to give us the money to provide these services. We cannot depend on the state government to give us the money to provide these services. And we don't want to. We want to provide for our own.

To do this, we need a stable tribal economy. This economy must provide jobs for our people, both skilled and unskilled; this economy must return money back into our community and the pockets of our people; and finally, this economy must allow us to diversify so we can sustain our economy into the future. We know that diversification is the

key to economic survival and that is what we are doing. Gaming has provided the Winnebago with this kind of economy.

For too long our people have existed in poverty. They have been denied jobs. They have . . .

Appendix 13

INDIAN GAMING REGULATORY ACT

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE NEED FOR
AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT

APRIL 26, 1994
WASHINGTON, DC

PART 2

TESTIMONY
OF
BERNARD BOUSCHOR, CHAIRMAN
SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS
BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

APRIL 27, 1994

Dear Chairman Inouye and Members of the Committee:

I. Introduction

On behalf of the Sault Ste. Marie Tribe of Chippewa Indians, I wish to express our appreciation for extending to us this opportunity to discuss the implementation of the Indian Gaming Regulatory Act as it relates to Indian gaming operations in the State of Michigan. I am pleased and honored to address you with representatives of the National Indian Gaming Association and Tribal governments from across the Country.

The Sault Ste. Marie Tribe of Chippewa Indians wishes to express to the Committee our concern over recent calls to amend the Indian Gaming Regulatory Act to increase Federal or State regulation of Indian gaming. We believe the success of Tribal gaming operations in Michigan is proof of the fact that Tribal governments are capable of and are more successful when they have the primary role in regulating their own gaming operations.

II. Background

The Sault Ste. Marie Tribe of Chippewa Indians is the largest federally recognized Tribe in Michigan, with over 20,000 members. Located in Michigan's Upper Peninsula, the Tribe provides direct services to members in seven counties (Chippewa, Mackinac, Luce, Alger, Schoolcraft,

Delta and Marquette). Gaming revenues are essential to the provision of services to this population.

Although the Tribe has been conducting a Bingo operation for several years, a small casino was opened in 1985. In 1985 the Tribe began with a 10,000 square foot facility offering blackjack and poker and employing about 89 employees. Today the Tribe operates a 95,000 square foot gaming facility in Sault Ste. Marie, Michigan and another in St. Ignace, Michigan. These casinos offer a wide variety of games including slot machines. The gaming operations includes hotels, a restaurant and gift shops.

The Tribe's gaming operations now employ over 1600 people and produced over 100 million dollars in gross revenue last year. The Tribe is the sole owner and operator of all its' gaming operations.

After over five years of negotiation and litigation, a compact between each of the Michigan Tribes and the State of Michigan was finally signed in August, 1993.

III. Gaming Regulation

The compact between the Tribes and the State stands as a recognition of the Tribes' right to regulate their own gaming operations as sovereign governments, as well as their success at self regulation for over eight years. Under the compact with the State of Michigan, the Tribes maintain the primary responsibility for regulating their own gaming activities. The State's role is limited to monitoring Tribal regulation. The compact does, however, require that certain minimum standards be followed. For instance, the compact specifies that certain Michigan laws pertaining to employment be followed, the Tribes comply with the Bank Secrecy Act and that minimum standards be followed with regard to background checks. (See attachment #1, Compact between the Sault Ste. Marie Tribe and the State of Michigan).

Indian gaming operations in Michigan are operated free of any infiltration by organized crime. These casinos have not generated an increase in criminal activity. Indeed the Sault Ste. Marie tribe of Chippewa Indians works closely with the Federal Bureau of Investigation, criminal investigators with the Bureau of Indian Affairs, Michigan State Police and local police agencies. We have received the support of the Chief of Police of the City of Sault Ste. Marie, officials of the Michigan State Police and other law enforcement officials. (See the attached correspondence from Sault Ste. Marie City Police Chief Fitzgerald and the Chippewa County Prosector Pat Shannon). We consistently work with Canadian police authorities as we are located very near the U.S.-Canadian border. The Tribe has its' own public safety department comprised of thirteen officers. (See attachments; #2, Letter from the Detroit Police Officers Association, #3 Letter to Ted Gatzaros from the Wayne County Sheriff's Department, #4 Letter to Ted Gatzaros from the Wayne County Sheriff's Local 502, #5 Letter from Chief of Police of the City of Sault Ste. Marie to Governor John Engler, #6 Letter from Chippewa County Prosecutor Patrick Shannon to Governor Engler).

The biggest obstacle to effective law enforcement we currently face in Michigan is not inadequate regulation, but inadequate funding and jurisdictional barriers. Indeed, the Sault Ste. Marie Tribe is currently working with local government officials to fund law enforcement services to expand the financial resources available to local law enforcement agencies and thereby improve the availability of police services to local communities as well as the Tribal community. In addition, Michigan Tribes have been working to pass cross-deputization legislation in Michigan to help alleviate the problems imposed by jurisdictional barriers to prosecution of criminal activity.

Effective regulation of their own gaming operations is certainly one of the principal reasons for the success of the Tribe's gaming operations in Michigan. The Sault Ste. Marie Tribe has developed a system of regulation modeled after the systems utilized by the State of Nevada. The minimum internal control standards set up by the Nevada Gaming Control Board have been adapted for use in the Tribe's gaming operations.

In addition to these internal controls, the tribe conducts external, independent audits. The company conduction the audit, Anderson, Tackman & Company has been licensed by the State of Wisconsin for work in casinos. These audits have been approved by the office of the Inspector General.

The Tribe has spent a great deal of time and money to employ the best possible security measues to insure the integrity of its' gaming activities. We have included a state of the art camera security system utilizing over 364 cameras in one facility alone. The entire operation of the facility is captured on video tape. The tapes themselves are retained until the accounting paperwork is balanced out. We have purchased a player tracking system and a slot information system that allows us to compare the theoretical hold against the actual. Any discrepancy is investigated. Computerized accounting records are checked daily, weekly, quarterly, and finally yearly. Background checks are performed on every employee. This list in not meant to be exhaustive, but representative of the complexity of the regulatory measures we have taken.

The Tribe currently complies with the Bank Secrecy Act. W2-G forms for gambling winnings are required to be filled out and filed. 1042-S forms for non-resident aliens are filed. Currency Transaction Reports are filled out and filed.

In addition to these measures the Tribe has instituted an internal system of checks and balances. The management of

the gaming operations have been separated from tribal governmental operations with the creation of an Economic Development Commission. The Economic Development Commission must report to the Tribal Board of Directors as to the efficiency and integrity of the gaming operations. The casino comptroller and assistant comptroller are in fact Tribal employees, not casino employees. Therefore, they are wholly independent of casino management and report directly to the Tribal Chief Financial Officer. The legal representation of the Casino is provided by the Tribal Attorney's office. These officials are responsible to the Board of Directors. They in effect function as watchdogs for the Tribe.

Furthermore, the Tribe has adopted an extensive gaming ordinance which establishes a Tribal Gaming Commission independent of both the Tribe Board of Directors and the Economic Development commission. The gaming Commission will license all management officials and gaming employees as well as all gaming vendors. The Commission will possess independent audit powers (See attachment #7; Tribal Gaming Ordinance).

The Sault Ste. Marie Tribe is proud of its' success as well as the integrity of its' gaming operations. After all it is the Tribes that have the most to lose from badly run gaming operations. It stands to reason that the Tribes themselves are in the best position to regulate their own gaming operations, as it is they who have the most to lose. We have established ourselves as successful . . .

Appendix 14

INDIAN GAMING REGULATORY ACT

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE NEED FOR
AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT

APRIL 26, 1994
WASHINGTON, DC

PART 2

Sault Area
Chamber of Commerce
2581 I-75 Business Spur
Sault Ste. Marie, Michigan 49783
(906) 632-3301 • Fax (906) 632-2331
1-800 MI-SAULT

May 13, 1993

Governor John Engler
Capitol Building
Lansing, MI 48909

Dear Governor Engler:

Those of us in Sault Ste. Marie who feel responsible in some measure for maintaining a viable economy, shudder a bit when we hear of any potential threat to tribal gaming operations. Therefore, the Board of Directors of the Sault Ste. Marie Chamber of Commerce strongly supports an agreement between the State of Michigan and Native American Tribes which will assure that the tribes can continue present gaming operations on reservation lands.

There is no doubt that during the early years of the development of the Kewadin Casino in Sault Ste. Marie, many area business people were apprehensive and uncomfortable with the expansion of gambling. We predicted that there would be a great deal of negative impact. We could see the possibility of an increase in crime, even some involvement of organized crime, unfair competition which might destroy certain types of businesses and an unhealthy situation arising between the local community and an autonomous Indian society.

None of these predictions have come true. The Sault Tribe of Chippewa Indians are very good neighbors. The profits from their operations have made possible a dramatic improvement in the standard of living, not only for tribal

members, but for the entire community. Hundreds of jobs, good jobs, are available. Social programs, good housing, auxiliary businesses and new opportunities exist at a level we never anticipated. After recovering from the economic doldrums following the closure of the local air force base in the 1970's, our entire area is enjoying a revival. Tourism is growing and developing into a year-round industry, in part, because of the attraction of the casino. Visitors who come to gamble, see our beautiful peninsula, and return with the families to enjoy the sights.

It would be tragic to have anything happen which might reduce the benefits derived from tribal businesses. They, and we, need your support.

[SIGNATURES]

ATTACHMENT 10

Appendix 15

INDIAN GAMING REGULATORY ACT

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON THE NEED FOR
AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT

APRIL 26, 1994
WASHINGTON, DC

PART 2

ST. IGNACE, MICHIGAN
OFFICE OF THE MAYOR
BRUCE J. DODSON

TO WHOM IT MAY CONCERN,
BERNARD BOUSCHER, SOO TRIBE

DEAR BERNARD,

I WISH YOU TO KNOW ABOUT THE IMPACT YOU AND THE CASSINO HAVE ON THE ECONOMY AND TOURISM IN THE STRAITS AREA. THIS VENTURE HAS NOT ONLY IMPROVED THE OVERALL ECONOMY OF THE AREA, BUT HAS REDUCED THE WELFARE ROLL OF OUR COUNTY BY THE LARGEST PERCENTAGE SINCE THE BUILDING OF THE MACKINAC BRIDGE, WHEN EVERYONE HAD A JOB. THE DIRECTOR OF THE DEPARTMENT OF SOCIAL SERVICES FOR MACKINAC AND LUCE COUNTY TOLD ME AT LUNCH LAST WEEK, THAT EVERY ABLE BODIED PERSON IS NOW WORKING IN A THREE COUNTY AREA, INCLUDING ALL MEN, WOMEN, AND TEENAGE PERSONS. THIS MUST BE A FIRST, AND IN AN AREA OF 47% UNEMPLOYMENT THE TRIBE HAS CERTAINLY BEEN ONE OF THE MAIN CONTRIBUTORS.

WITHOUT THE VENTURES OF THE SOO TRIBE, CASSINO, HEALTH CARE PROGRAMS, HOME BUILDING, ETC., THIS AREA WOULD BE IN A DIFFERENT FINANCIAL CONDITION IN THIS 1993 ECONOMY.

AS MAYOR OF THE CITY OF ST. IGNACE, I CERTAINLY HOPE YOU CONTINUE TO DEVELOPE AND EXPAND THE SCOPE OF THE SHORES CASSINO AND THE AREA. YOUR EXPERTISE IN ECONOMIC DEVELOPMENT IS SECOND TO NONE, AND IS A WELCOME CHANGE FROM THE OLD VIEW OF THE TRIBE. KEEP UP THE FINE WORK, AND WE ARE HERE TO HELP IN ANY WAY POSSIBLE.

SINCERELY,

BRUCE J. DODSON, MAYOR OF ST. IGNACE

Home of Michigan's Largest Antique Auto Show

ATTACHMENT 11

Appendix 16

INDIAN GAMING REGULATORY ACT

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

S.2230

AMENDMENTS TO THE
INDIAN GAMING REGULATORY ACT

JULY 19, 1994
WASHINGTON, DC

PART 1

STATEMENT OF RAY HALBRITTER
NATION REPRESENTATIVE
ONEIDA INDIAN NATION OF NEW YORK
BEFORE
THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
JULY 19, 1994

Mr. Chairman, my name is Gaiongwilode. I am also known as Ray Halbritter. I am the Nation Representative of the Oneida Indian Nation of New York. Thank you for this opportunity to appear before the Committee on Indian Affairs to present our view on a matter that is of vital concern to the Oneida Indian Nation of New York and other sovereign Indian governments. This matter is the future of Indian gaming as a means to empower Indian Nations and Tribes to be self-sufficient, self-governing and economically developed.

Congress enacted the Indian Gaming Regulatory Act in 1988 "to promote tribal economic development, tribal self-sufficiency, and strong tribal government." The Act is doing just that. No useful purpose would be served by replacing the Indian Gaming Regulatory Act with a new more complex statutory scheme and a larger federal bureaucracy to usurp the regulatory roles now negotiated, agreed upon and played by Indian Nations and States.

I will refer to the casino enterprise of the Oneida Nation to illustrate the current success of the Indian Gaming Regulatory Act.

A year ago today, the Oneida Indian Nation of New York opened Turning Stone Casino to the public. Turning Stone is the first Indian owned and operated casino over in New York State and the first casino of any kind in New York in over 100 years.

Because of Turning Stone, our once impoverished Oneida Nation is now the second largest employer in Central New York. We employ nearly 2000 people, 88% of whom are non-Indian. Our payroll is 1.1 million per week in an economically depressed area of Central New York. Thank to revenue from the casino, the Nation is able to house, feed, and educate its people, to nurture and enhance the Oneida's unique culture, to repossess ancestral homeland, to significantly benefit the local community, to research and develop other business enterprises, and to otherwise provide for the seven generations yet to come as our culture requires of us to do.

The Nation offers casino gaming subject to a comprehensive compact negotiated and entered with the State of New York. The Nation and the State negotiated for almost a year to produce a 41 page compact with 159 pages of detailed appendices of game rules, standards of operation and management, accounting requirements, and procedures to reimburse the State its regulatory costs.

The regulatory framework provided by the Indian Gaming Regulatory Act compacting process respects the sovereignty of both Nation and State. The State and the Nation, not the federal government, determine the games offered, their rules, and the other internal controls installed at the casino. The Nation-State compact also allocates responsibility between Nation and State regulatory authorities, sets the standards for licensing of facilities, employees and vendors, and establishes parameters for background investigations, law enforcement and all other . . .

SUMMARY OF DEVELOPMENT INITIATIVES

for the
ONEIDA INDIAN NATION OF NEW YORK

JUNE 1994

recognized Nations in the area and intermarried, there are very close social and economic ties with these other Nations. The Oneida Nation lineage is by matrilineal descent. Therefore, many Oneida children of mothers with other tribal affiliations are not included in the Oneida Nation membership. In addition, to be officially enrolled with the Oneida, an individual must be at least one-quarter degree Indian blood.

The Oneida Nation has chosen to include these other Federally recognized Indians in the spirit of cooperation for they are a part of the fabric of the larger community. The Nation continues to provide comprehensive services to all Oneida Indian Nation members as well as those federally recognized Indians with whom they have coexisted for centuries.

HISTORIC NEEDS

The problems and needs of the community are not unlike those typically plaguing Native Americans everywhere — and good portion of the non-Indian population as well. According to the 1991 Health Needs Assessment, the Oneidas are plagued by the same health problems confronting other American Indians today: obesity, sedentary life styles, diabetes, and alcohol/substance abuse. Preliminary results from the Oneida Nation Comprehensive Survey (ONCS) reveal that 65% of those Oneida households surveyed earned an annual income of less than $15,000 per year. Many Oneida members lived in environments where plumbing facilities were inadequate or nonexistent and insufficient heating presented a hazard to health and safety. Until recently there were no fire hydrants and solid waste disposal services were inadequate.

Before 1990, when economic initiatives infused needed resources, many Nation members were unable to develop educational skills needed to find suitable employment.

A 44%unemployment rate, lack of community facilities, and inaccessibility to quality health care and other public services made life difficult for members. Many of the Nation's young people moved away seeking employment opportunities elsewhere. However, the majority of these people have expressed the desire to return to their Oneida home to look for permanent jobs and to make permanent homes.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 93-16609
D.C. No. CV-92-00812-GEB

RUMSEY INDIAN RANCHERIA OF WINTON INDIANS; TABLE MOUNTAIN RANCHERIA, CHER-AE HEIGHTS INDIAN COMMUNITY OF THE TRINIDAD RANCHERIA, SAN MANUAL BAND OF MISSION INDIAN, VIEGAS RESERVATION OF THE CAPTAIN GRANDE BAND OF DIEGUENO MISSION INDIANS AND HOPLAND BAND OF POMO INDIANS; SYCAN BAND OF MISSION INDIANS; AGUA CALIENTE BANDOF CAHUILLA INDIANS,
Plaintiffs-Appellees,
vs.
PETE WILSON, Govenor, State of California,
Defendants-Appellants.

No. 93-16745
D.C. No. CV 92-00972-GEB

RUMSEY INDIAN RANCHERIA OF WINTON INDIANS; TABLE MOUNTAIN RANCHERIA, CHER-AE HEIGHTS INDIAN COMMUNITY OF THE TRINIDAD RANCHERIA, SAN MANUAL BAND OF MISSION INDIAN, VIEGAS RESERVATION OF THE CAPTAIN GRANDE BAND OF DIEGUENO MISSION INDIANS AND HOPLAND BAND OF POMO INDIANS; WINTON INDIANS; SAN MANUEL BAND OF MISSION INDIANS; CABAZON BAND OF MISSION INDIANS; THE SANTA YNEZ BAND OF CHUMASH MISSION INDIANS OF THE SANTA YEABEL RESERVATION, OF THE CAPITAN GRANDE BAND OF DIEGUENO MISSION INDIANS; SAN MANUAL BAND OF MISSION INDIANS, THE ROPLAND BAND OF POMO INDIANS, THE SYCUAN BAND OF MISSION INDIANS, THE MORONGO BANKD OF MISSION INDIANS, THE SANTA ROSA BAND OF TACHE

INDIANS, THE CACHIL DEHE BAND OF WINTON INDIANS OF THE COLUSA INDIAN COMMUNITY, THE SOBOBA BAND OF CAHUILLA MISSION INDIANS, THE ROBINSON BAND OF POMO INDIANS, THE AGUA CALIENE BAND OF CAHUILLA INDIANS, AND THE BARONA GROP OF THE CAPITAN GRANDE BAND OF MISSION INDIANS,
Plaintiffs-Appellees/Cross-Appellants,
vs.
PETER WILSON, Governor, State of California,
Defendants-Appellants/Cross-Appellees.

ORDER
FILED
August 21, 1995
Cathy A. Catterson, Clerk
U.S. Court of Appeals

Before: WALLACE, Chief Judge, O'Scannlain, Circuit Judge, KELLEHER,* District Judge

The parties are instructed to file supplemental letter briefs addressing the relevance of the California Court of Appeal's decision in *Western Telcon v. California State Lottery,* No. B080603 (July 26, 1995).

The letter briefs shall not exceed the five pages in length and shall be filed within seven days of the date of this order.

Disposition of Appellees/Cross-Appellant's Motion filed August 15, 1995 is temporarily deferred. Issuance of the mandate is STAYED until further order of the court.

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*The Honorable Robert J. Kelleher, Senior United States District Judge for the Central Disrict of California, sitting by designation.